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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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REMAND HEARING OF CHELSEA SCHOOL : Case No. LMA G-892
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A hearing in the above-entitled matter was held on
March 26, 2012, commencing at 9:40 a.m., at the Council
Office Building, 100 Maryland Avenue, Rockville, Maryland
20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

	<u>Page</u>
Vicki Warren, Witness for Opposition	3
David Brown, Esq., for Opposition	6
Robert R. Harris, Esq., for Applicant	9
Anne Spielberg, Witness for Opposition	37/337
Judy Christensen, Witness for Opposition	89
Aakash Thakkar, for Applicant	114
Tom Armstrong, Witness for Opposition	151
Maria Schmit, Witness for Opposition	165
Peter Perenyi, Witness for Opposition	196
Michael Gurwitz, Witness for Opposition	200/203
Kenneth Doggett, Witness for Opposition	248
Kathleen Samiy, Witness for Opposition	297
Joan Bissell, Witness for Operation	325

E X H I B I T S

<u>Exhibit No.</u>	<u>Marked/Received</u>
338 Judy Christensen Slide Show	96/--
339 EYA Model	185/185
340 Binding Element Related to Trees	360/360

P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the remand of local map amendment G-892, an application filed by Chelsea Residential Associates LLC. The applicant is requesting a rezoning of the property from the R-60 zone to the RT-12.5 zone for property located at 630 Ellsworth Avenue, Silver Spring, Maryland. The property's legal description is lot 58, Evanswood, section 1. And welcome back again.

MR. HARRIS: Thank you.

MS. ROBESON: Ms. Warren, you were -- well, are there any preliminary matters?

MR. BROWN: No, ma'am.

MR. HARRIS: No.

MS. ROBESON: Ms. Warren, you were kind enough to be the last witness and after a long day. So I thought that if you wish, if you want to, before we start right into cross-examination would you like to say anything else now that you, hopefully, have been rested, and fed, and had coffee, and all that kind of stuff.

MS. WARREN: Thank you very much. I would also like to give the opportunity to you because you were asking me questions under that also difficult kind of time period. I think the only thing that I would add is that I'm not sure I was clear enough. And the thing that strikes me, if I had

1 to sum it up in a sentence, is that I feel like the action
2 has already been taken that we need to resolve this case.
3 Council voted with the intent that if the Chelsea School
4 exception was no longer viable, if it was denied, or if it
5 wasn't approved, then it would revert back to the original
6 parcel. So in a sense, we have the groundwork to move
7 forward. So that's all.

8 MS. ROBESON: Okay. Thank you. And I do commend
9 your, I'm very impressed with your research, so I don't want
10 that to get lost in the record.

11 What I'm struggling with is that one can make an
12 argument that the 37, the smaller environmental setting is
13 still justified because it's for the same rationale as the
14 Chelsea School because it's combined with a larger park-like
15 setting. That's what I was trying to get at, and I wasn't
16 being very articulate. And I guess my question is, what
17 would your response be to that? What I heard Friday was
18 your main concern is there aren't, wouldn't be sufficient
19 controls over development. Is that correct?

20 MS. WARREN: Well, there's two issues. One is
21 that I would also have to argue against making a 37,000
22 square feet environmental setting, just based on a park-like
23 setting. I think there are other criteria that go into
24 establishing an environmental setting, and need to go back
25 to all of those criteria which, you know, is we'd go back to

1 the beginning, what the Historic Preservation Commission
2 considered itself. And he, in that, is that customary
3 setting for a historic property is the size of the parcel at
4 designation. There are very many reasons, and Judy
5 Christensen, Montgomery Preservation, will go into them
6 further because --

7 MS. ROBESON: Okay.

8 MS. WARREN: -- she understands that side of it --

9 MS. ROBESON: Okay.

10 MS. WARREN: -- much more than I do.

11 MS. ROBESON: All right. All right.

12 MS. WARREN: Okay. And then from there, yes, my
13 concern with not having all of the land designated as
14 environmental setting is that you remove a layer of
15 protection. It has nothing to do with a private company, or
16 a school, or any kind of a corporation; it has to do with
17 our government which, you know, as we'd seen, Chelsea meant
18 well, their attorney championed, you know, making this the
19 jewel of the campus. He was going to be a caretaker. They
20 didn't mean not to be a caretaker, they didn't mean to fail,
21 but it happened. Its --

22 MS. ROBESON: But they did.

23 MS. WARREN: Yeah, and its economics. And so we
24 have that lesson. We've learned that lesson.

25 MS. ROBESON: Okay. All right. That was very

1 helpful to me. Thank you.

2 MS. WARREN: Okay.

3 MS. ROBESON: Mr. Harris, cross-examine. Or --

4 MR. BROWN: I do have a --

5 MS. ROBESON: -- no, I'm sorry.

6 MR. BROWN: I do have a question for her.

7 MS. ROBESON: Yes. That's fine.

8 MR. BROWN: Can't find it right now. Is the one
9 with the purple park area around?

10 MR. HARRIS: Oh.

11 MS. ROBESON: Oh, the --

12 MR. HARRIS: The cross hatch.

13 MR. BROWN: Yeah.

14 MR. HARRIS: Let me just find it.

15 MR. BROWN: Do you have it, Mark? No.

16 MR. HARRIS: I don't have it. I mean, it was an
17 earlier exhibit.

18 MR. BROWN: You can pull it over here.

19 MS. ROBESON: I don't think we have it.

20 MR. BROWN: It's all right, I can use this one.

21 Ms. Warren?

22 MS. WARREN: Yes.

23 MR. BROWN: Do you recall seeing the exhibit which
24 showed the combination of the 37,000 square foot
25 environmental study and the park area around it all covered

1 in purple?

2 MS. WARREN: Yes.

3 MR. BROWN: Do you recall the testimony that said
4 that the combined acreage of this environmental setting and
5 the park is roughly equivalent to 1.4 --

6 MS. WARREN: Yes.

7 MR. BROWN: -- acres?

8 MS. WARREN: Yes.

9 MR. BROWN: Now, the original environmental
10 setting extends further out --

11 MS. WARREN: Yes, to the fifth --

12 MR. BROWN: -- toward --

13 MS. WARREN: -- to the fifth house.

14 MR. HARRIS: Objection.

15 MR. BROWN: I'm sorry. I shouldn't use --

16 MS. ROBESON: Well, he's asking a question.

17 MR. BROWN: The 1.4 acre environmental setting --

18 MS. WARREN: It's the parcel, the original --

19 MR. BROWN: It's not an original.

20 MS. ROBESON: That, Mr. Harris, I understand that
21 point. I want to get to the point that he's trying to make.
22 I'll note your objection. Go ahead, Mr. Brown.

23 MR. BROWN: Is it fair to summarize the difference
24 between those two proposals as the 1.4 acre parcel extends
25 further out to the last, rather than all the way out to

1 Springvale Road to the north?

2 MS. WARREN: Yes, it is.

3 MR. BROWN: Yeah.

4 MS. WARREN: The original parcel goes to the fifth
5 house.

6 MR. BROWN: Right.

7 MS. WARREN: On Cedar.

8 MR. BROWN: Aside from your concern to stick with
9 the original size of the parcel, do you see any particular
10 reason to prefer extending the setting out to the west
11 rather than extending it to the north, assuming that it has,
12 assuming that the overall setting is about 1.4 acres?

13 MS. WARREN: Yes, there is the historical concern,
14 which is that the original parcel is designated for a
15 reason, it's for the setting of the house. It's the way the
16 house is situated. The house faces Georgia Avenue and so
17 adding that additional land on the side would give it
18 acreage or the side porch.

19 In addition, I would say that there is, you know,
20 sort of a legislative reason. As I said before, I truly
21 believe that because the smaller environmental setting was
22 tied to the special exception, and the language is in there,
23 it reverts back if the special exception is denied. And if
24 you characterize denial with abandonment, which ends up with
25 the same condition, you don't have to take any further

1 action. It's done.

2 MR. BROWN: Thank you.

3 MS. WARREN: Thank you.

4 MR. BROWN: I don't have any other questions.

5 MS. ROBESON: Thank you. Okay. Now, Mr. Harris,
6 cross-examination? And I'm just going to note for the
7 record that your position is that 1.4 is not the correct
8 environmental setting.

9 MR. HARRIS: Neither the correct one, nor the
10 original one. That was what I was objecting to.

11 MS. ROBESON: All right. I understand.

12 MR. HARRIS: Okay.

13 MS. ROBESON: So that objection is noted --

14 MR. HARRIS: Thank you.

15 MS. ROBESON: -- so you don't have to make it
16 again.

17 MR. HARRIS: Thank you. Yes, Ms. Warren, I
18 appreciate as well your research to try to understand the
19 evolution of these provisions in the master plan regarding
20 the Riggs-Thompson, but I do have a few questions to help
21 clear up some differences in the interpretation that you
22 have versus the Planning Board's interpretation, and
23 frankly, mine as well. So bear with me if you would.

24 I'm pretty sure that I'm correct that you don't
25 regularly participate in the master plan adoption process?

1 MS. WARREN: I've never participated in it.

2 MR. HARRIS: Okay. But you did research on this
3 as -- I'll call it an amateur -- but a thorough amateur?

4 MS. ROBESON: Well, wait a minute.

5 MR. HARRIS: Okay.

6 MS. ROBESON: I don't consider what she did as an
7 attorney --

8 MR. HARRIS: Okay. Fine. Strike that, strike
9 that.

10 MS. ROBESON: I think I would have hired her in a
11 second, okay?

12 MR. HARRIS: I agree. I agree. She went very far
13 in this.

14 But based on your research, you are aware that
15 master plan provisions and the wording in a master plan
16 evolves throughout the master plan adoption process?

17 MS. WARREN: Yes, and I think that was my point.

18 MR. HARRIS: Yes. And it can change at each
19 level, there being multiple levels. The planning staff --

20 MS. WARREN: Yes. That's why I researched each
21 level.

22 MR. HARRIS: And the ultimate level, the County
23 Council, they are the ones who make, who adopt the formal
24 language. It's their plan that controls, not prior
25 iterations.

1 MS. WARREN: Again, that's why I went to the level
2 of researching all the County Council documents.

3 MR. HARRIS: And the Council's final adoption is
4 often influenced by individual parties making their case in
5 testimony, through lobbying, and through the Council's own
6 understanding of issues, isn't that correct as well?

7 MS. WARREN: I guess I would say that happens a
8 great deal; however, I did interview Jean Arthur, who was
9 involved. And she said the --

10 MR. HARRIS: Objection.

11 MS. ROBESON: It's your question.

12 MR. HARRIS: No. She's going to, about to offer
13 hearsay evidence that I don't think is admissible.

14 MS. ROBESON: It is admissible if it's reliable in
15 an administrative proceeding.

16 MR. HARRIS: I don't know how reliable it is
17 because I think it's both erroneous and --

18 MS. ROBESON: Well, she's already testified to it.

19 MR. HARRIS: I understand that. Well, I don't
20 know that she testified to that; she offered the documents
21 there that I was also going to object to.

22 MS. ROBESON: No, I'm pretty sure she -- I don't
23 have the transcript but --

24 MR. HARRIS: Okay.

25 MS. ROBESON: -- I'm pretty sure she testified to

1 it.

2 MR. HARRIS: All right. Fine. Okay.

3 MS. ROBESON: Let me just, before we get into
4 this, your, this line of cross-examination, this is my
5 feeling -- and you have the ability to argue with me -- but
6 my feeling is that the Planning Board does not have -- I
7 understand the legislative process. My duty is to determine
8 the legal interpretation of this document of a master plan,
9 so, and part of what is relevant in a master plan is the, in
10 interpreting a document from a legal statutory construction
11 perspective, is the legislative intent.

12 So I understand what the Planning Board did, and
13 you can, I'm not cutting you off, but she has given us what
14 I would consider legislative history that is valid. Now,
15 you can say, you know, you're kind of asking her legal
16 statutory construction questions, and I'm not going to cut
17 you off, but that's kind of where I come from, that whatever
18 the Planning Board said, the Planning Board said; whatever
19 the master plan says, the master plan says.

20 But I think, in the first decision, I said that
21 legislative history is important. All right? So you can
22 continue the line of questioning, but just because the
23 Planning Board said or the Council, you know, we've heard a
24 lot about this technical appendix versus what's in the
25 master plan. We've heard, I would consider, ad nauseam,

1 about it, so you know, with that said, you can continue the
2 line of questioning, but you know, I would appreciate your
3 considering these with my comments in the --

4 MR. HARRIS: That's fine. I think you've
5 effectively answered the question. My point in this series
6 of questions was to have Ms. Warren confirm, and you now
7 have, as I think she has, confirmed that it's an evolving
8 process, and that, you know, now a piece of language for an
9 interpretation at one point in time does not necessarily
10 mean what the final language says.

11 MS. ROBESON: Well, I don't know I said, if I said
12 that. I mean, I'm waiting to hear on the process. If Ms.
13 Christensen is going to testify, I'd like to hear what the
14 typical process is on designation of a parcel. If your
15 point is that, your point, I think what you're saying is
16 that the master plan is a guide versus a set -- no.

17 MR. HARRIS: No, though that may be true as well.
18 My point --

19 MS. ROBESON: Well, let me, then let me ask you
20 this. Can you address this? This might be something,
21 rather than for cross-examination of Ms. Warren -- who is
22 not an attorney, and you know, she's done a great job, but
23 she, these are legal interpretation questions -- rather than
24 cross-examination of her, what about addressing it in your
25 closing arguments?

1 MR. HARRIS: That's fine.

2 MS. ROBESON: How's that?

3 MR. HARRIS: I think that the cross-examination,
4 your comments are sufficient at this point in time to
5 proceed.

6 MS. ROBESON: Well, I don't want to cut you off.

7 MR. HARRIS: No, I understand. I understand.

8 MS. ROBESON: Okay.

9 MR. HARRIS: So let's focus on the evolution of
10 the plan then, first, at the Planning Board level. I think
11 you'd agree with me, wouldn't you, that the Sisters of the
12 Holy Names opposed any designation at all for the property?

13 MS. WARREN: Yes.

14 MR. HARRIS: And they were the owners of the
15 property at the time?

16 MS. WARREN: Yes.

17 MR. HARRIS: And then --

18 MS. WARREN: I found those letters and submitted
19 them.

20 MR. HARRIS: Yes. And the Chelsea School was
21 opposed to it if it were going to be larger than 37,056
22 square feet.

23 MS. WARREN: I don't think they used the word
24 "opposed." I think they said that it would be better for
25 their expansion purposes if they had more flexibility. They

1 talked a lot about flexibility.

2 MR. HARRIS: Didn't they say they would agree to
3 it? I don't know that they said it would be better.

4 MS. WARREN: Did they?

5 MR. HARRIS: Well then, let's find those documents
6 because I think --

7 MS. WARREN: Did they say they would agree to
8 what?

9 MR. HARRIS: Pardon?

10 MS. WARREN: I'm not sure what you're asking me.
11 If they said they would agree to what?

12 MR. HARRIS: I think they were opposed to --

13 MS. WARREN: I just don't -- yeah.

14 MR. HARRIS: -- anything other than 37,000 square
15 feet.

16 MS. WARREN: I don't think I want to say yes to
17 the word "opposed." I'm just a little bit leery of that,
18 because I recall language that wasn't quite as strong as
19 "opposed." But they may have said it in some, in some
20 letter, they may have used the word "opposed."

21 MS. ROBESON: Well, do you recall exactly? You
22 can say "no" if you don't recall exactly, but --

23 MS. WARREN: What I recall is the documents that
24 pertain to Chelsea's position, I think were the earlier
25 documents that I submitted as part of my earlier

1 testimony --

2 MS. ROBESON: Yes.

3 MS. WARREN: -- so I could definitely look it up.

4 MS. ROBESON: Okay. Well, I think Mr. --

5 MS. WARREN: I don't have all the -- MS.

6 ROBESON: -- Harris is looking it up.

7 MS. WARREN: He's looking it up?

8 MR. HARRIS: I'm, yes --

9 MS. WARREN: That's fine.

10 MR. HARRIS: -- bear with me a minute. I'll see
11 if I can find it because I'm pretty sure they were opposed
12 to anything other than 37,000. Well, I don't see that right
13 now.

14 MS. WARREN: That's okay.

15 MR. HARRIS: Cindy will keep looking for it.

16 MS. ROBESON: I have to say --

17 MR. HARRIS: Let's --

18 MS. ROBESON: -- I do recall a statement, reading
19 through your testimony, I recall a statement saying that
20 they opposed it unless it was the 37.

21 MS. WARREN: Yeah.

22 MS. ROBESON: That's, I'm not testifying.

23 MS. WARREN: Well, it was certainly -- yes, it was
24 -- let me put it to you this way. I mean, my only
25 hesitation is using the exact word "opposed." So let me put

1 it to you this way.

2 They spoke about it at great length, and they were
3 always in favor of a smaller setting for them to allow them
4 to expand. They had plans once they bought the property to
5 expand the campus. And there was a particular building --
6 you'll hear it in the audiotape of March 25th, 1999 --
7 Stephen Elmendorf was at that worksession, and he is the
8 attorney, he was the attorney for Chelsea, and he states
9 that there is a building that they planned to build that was
10 going to be inside that original larger environmental
11 setting. So he said it would block our building. He says
12 that on the tape.

13 MR. HARRIS: Okay. That's fine. Thank you.

14 MS. WARREN: Okay.

15 MR. HARRIS: Now, going through your documents,
16 you had -- got away from me again -- your Exhibit 2 --

17 MS. WARREN: Okay.

18 MR. HARRIS: -- which you offer as --

19 MS. WARREN: Two properties to the north and west,
20 Silver Spring --

21 MR. HARRIS: Yes.

22 MS. WARREN: -- preliminary draft appendix.

23 MR. HARRIS: Yes.

24 MS. WARREN: One with the language taped over?

25 MR. HARRIS: You have, the cover sheet of that --

1 MS. WARREN: Yes.

2 MR. HARRIS: -- and then I see two --

3 MS. WARREN: Yes.

4 MR. HARRIS: -- different --

5 MS. WARREN: Yes.

6 MR. HARRIS: -- maps there.

7 MS. WARREN: Yes.

8 MR. HARRIS: Okay.

9 MS. WARREN: They're not two different maps,
10 they're two different languages.

11 MR. HARRIS: Two different languages, yes.

12 MS. WARREN: Yes.

13 MR. HARRIS: And are you saying, which one of them
14 was in the appendix?

15 MS. WARREN: They both were.

16 MR. HARRIS: Well, let me show you this document
17 that I have here which is a bound copy of the appendix --

18 MS. WARREN: Okay.

19 MR. HARRIS: -- that I've had since 1998.

20 MS. WARREN: Okay, but this is later.

21 MR. HARRIS: That's, let me, may I see that?
22 That's later than this?

23 MS. WARREN: Uh-huh.

24 MR. HARRIS: October 1998?

25 MS. ROBESON: What's "this" that you're referring

1 to?

2 MS. WARREN: Yes.

3 MR. HARRIS: Exhibit 2 of --

4 MS. WARREN: This is when it was bound.

5 MR. HARRIS: Just one second.

6 MS. WARREN: Okay.

7 MR. HARRIS: Exhibit 2 of Ms. Warren's exhibit --

8 MS. ROBESON: Okay.

9 MS. WARREN: Uh-huh.

10 MR. HARRIS: -- is --

11 MS. ROBESON: Oh, I have it.

12 MS. WARREN: Uh-huh.

13 MR. HARRIS: -- is three pages.

14 MS. WARREN: Okay.

15 MR. HARRIS: It's a photocopy of a cover --

16 MS. WARREN: Uh-huh.

17 MS. ROBESON: October 1998.

18 MR. HARRIS: '98. And then it's two pages --

19 MS. ROBESON: We have it marked as 324B.

20 MS. WARREN: Yes.

21 MR. HARRIS: 324B. Thank you.

22 MS. WARREN: All my exhibits are 324.

23 MR. HARRIS: 324B. Okay.

24 MS. WARREN: Okay.

25 MR. HARRIS: And I've shown you now --

1 MS. WARREN: Yes, I see that.

2 MR. HARRIS: -- what is a bound copy of the
3 appendix --

4 MS. WARREN: Yes.

5 MR. HARRIS: -- the same date --

6 MS. WARREN: Yes.

7 MR. HARRIS: -- October 1998.

8 MS. WARREN: Uh-huh.

9 MR. HARRIS: But I don't find in there --

10 MS. WARREN: You're not going to find --

11 MR. HARRIS: -- these two pages.

12 MS. WARREN: Okay. Because you're not going to
13 find the taped-over version.

14 MR. HARRIS: Well, I don't --

15 MS. WARREN: They corrected it.

16 MR. HARRIS: Okay.

17 MS. WARREN: The point --

18 MR. HARRIS: There's only one --

19 MS. WARREN: The point of my putting that --

20 MS. ROBESON: Wait.

21 MS. WARREN: Okay.

22 MS. ROBESON: It is cross-examination, but I
23 really want you to hold that thought --

24 MS. WARREN: Okay.

25 MS. ROBESON: -- because I didn't quite understand

1 this taped-over version.

2 MS. WARREN: Okay.

3 MS. ROBESON: So you continue, Mr. Harris.

4 MR. HARRIS: Yes.

5 MS. WARREN: Okay.

6 MR. HARRIS: Wouldn't you agree with me that
7 there's only one version of the appendix dated October 1998?
8 There might have been prefatory documents, but when they
9 bind it, isn't that final of the public hearing draft?

10 MS. WARREN: Yes.

11 MR. HARRIS: Okay. So what you're holding then is
12 the final of the public hearing draft.

13 MS. WARREN: That's right.

14 MR. HARRIS: And what you've offered as the final
15 of the public hearing draft --

16 MS. WARREN: No, I --

17 MR. HARRIS: -- doesn't conform.

18 MS. WARREN: That's wrong. I didn't offer it as
19 the final. I offered it as an exhibit to show that there
20 was confusion over the language --

21 MR. HARRIS: Okay.

22 MS. WARREN: -- both in the hearing, which at the
23 Historic Preservation Commission hearing in June, there was
24 confusion; and there was also confusion when they went to
25 make this document.

1 MR. HARRIS: Well, there's no confusion in that
2 document. There's only one page in the final bound document
3 that I've given you, isn't there?

4 MS. WARREN: Yes.

5 MS. ROBESON: You know, I know that this is your
6 copy, but I'd like to admit it. If we're going to refer to
7 it as being an original 1998 public hearing draft, I would
8 like to admit it as an exhibit, because it, when this goes
9 up, or if this goes up on appeal, nobody's going to know
10 what that says.

11 MR. HARRIS: Well, we will. Exhibit 324B has two
12 pages attached to it.

13 MS. ROBESON: Yes.

14 MR. HARRIS: The first one, I'm not sure where
15 that comes from. The second page is exactly what is in the
16 bound version of the appendix. That is what is in the
17 appendix. The other piece is something else.

18 MS. WARREN: You want me to tell you what it,
19 where it comes from?

20 MR. HARRIS: No. Let's just stay on the line of
21 questioning for a minute.

22 MS. WARREN: It comes from the Planning Board's
23 own files.

24 MS. ROBESON: Well, you can, when this comes back,
25 or when, after he's finished asking questions, you get a

1 chance to, again, clarify whatever you need to clarify.

2 MS. WARREN: Okay.

3 MR. HARRIS: Okay. So I think we're finished with
4 that then. Thank you.

5 MS. WARREN: Uh-huh.

6 MS. ROBESON: Okay.

7 MR. HARRIS: Turning to your exhibit --

8 MS. WARREN: Uh-huh.

9 MR. HARRIS: -- your exhibit to 324A --

10 MS. WARREN: Yes.

11 MR. HARRIS: -- now, you mentioned that one of
12 these versions had something taped over.

13 MS. WARREN: Yes. The first one.

14 MS. ROBESON: Which exhibit are you at?

15 MS. WARREN: Is 324B.

16 MS. ROBESON: Oh, still 324B. Okay.

17 MS. WARREN: Yes.

18 MS. ROBESON: I thought he said -- all right.

19 MR. HARRIS: And what part of what is on the
20 second page of 324B was taped over?

21 MS. WARREN: I think you can see it on your copy.
22 I need, do you have 324B?

23 MS. ROBESON: What's the --

24 MS. WARREN: Yeah.

25 MS. ROBESON: -- untaped version?

1 MS. WARREN: The untaped version is the second
2 page.

3 MS. ROBESON: Okay.

4 MS. WARREN: You can see what's taped over. The
5 second line, you can see that the printing is sort of
6 truncated. So what they did is, somebody wrote this, okay,
7 and then realized that that wasn't what came out in the
8 hearing, and so they taped over "1.4 acre parcel on which
9 the house is located." And they attached this version to
10 this version, and they were all in this version --

11 MS. ROBESON: Wait, wait.

12 MS. WARREN: -- which wasn't bound.

13 MS. ROBESON: When you say "this version," I don't
14 know what that --

15 MS. WARREN: I'm sorry.

16 MS. ROBESON: -- what you're referring to.

17 MS. WARREN: This was --

18 MS. ROBESON: Okay.

19 MS. WARREN: This is not --

20 MS. ROBESON: What's that version?

21 MS. WARREN: Okay. This was a typewritten version
22 of the appendix of October 1998.

23 MS. ROBESON: Of the public hearing draft, or
24 the --

25 MS. WARREN: Yes.

1 MR. HARRIS: Yes.

2 MS. WARREN: Of the public hearing preliminary
3 draft.

4 MS. ROBESON: Okay. All right. So what did you
5 see in the file?

6 MS. WARREN: I saw these pages with all of the
7 material in between.

8 MS. ROBESON: Both pages?

9 MS. WARREN: Yes. And I thought it was important
10 because, first of all, it was taped over, which made me want
11 to take the tape off; and second, because it showed that
12 there was a great deal of confusion at this particular time.

13 MS. ROBESON: So you're testifying that both
14 versions were in Park and Planning's records?

15 MS. WARREN: Yes.

16 MS. ROBESON: Okay.

17 MR. HARRIS: The --

18 MS. WARREN: Pre-bound version.

19 MR. HARRIS: The two are --

20 MS. WARREN: Perfunctory documents, as you called
21 them.

22 MR. HARRIS: Okay.

23 MS. ROBESON: Well -- okay.

24 MR. HARRIS: Yes.

25 MS. ROBESON: All right. No editorial comments

1 here.

2 MS. WARREN: Sorry.

3 MS. ROBESON: Okay.

4 MR. HARRIS: The two are completely different,
5 aren't they? You couldn't tape over the language on the
6 third page in any way to make it conform with the second
7 page.

8 MS. WARREN: Okay.

9 MR. HARRIS: So the second page is not a taped-
10 over version of the third page.

11 MS. ROBESON: Wait. The third, where are you
12 counting from? The cover sheet?

13 MR. HARRIS: The first page, the second page, and
14 then the third page.

15 MS. ROBESON: Okay. So --

16 MS. WARREN: No, it's not a taped-over version of
17 the third page.

18 MR. HARRIS: Because even the first line after
19 "environmental setting," is different.

20 MS. WARREN: I understand that.

21 MR. HARRIS: So it's -- okay. So just, that's
22 fine, so you're agreeing with me that the, page 2 is not a
23 taped-over version of the third page, and you're agreeing
24 with me that it's the third page that's in the bound version
25 of the public hearing draft.

1 MS. WARREN: Let me see your bound version again
2 so I can compare it word for word.

3 MR. HARRIS: Yes.

4 MS. WARREN: Yes.

5 MR. HARRIS: And so whereas the second page in
6 here that you've attached as if it's part of the public
7 hearing draft and --

8 MS. WARREN: No, I didn't attach it as if it was
9 part of --

10 MR. HARRIS: Okay. Fine. So you --

11 MS. ROBESON: Wait. I'm sorry. I didn't hear
12 your question.

13 MR. HARRIS: She's admitting that the second page
14 is not a piece of the, not a page from the public hearing
15 draft, but it was a page in the files regarding that draft.

16 MS. WARREN: It was a page in a document that said
17 "public hearing preliminary draft."

18 MR. HARRIS: A typewritten document or a printed-
19 type document? You said typewritten earlier. Are you
20 distinguishing this as not typewritten?

21 MS. WARREN: I'm distinguishing it from bound.

22 MR. HARRIS: Okay. In an unbound -- okay. And so
23 the second page says that the setting's 1.4 acres,
24 basically, period.

25 MS. WARREN: Yeah.

1 MR. HARRIS: But the third page says something
2 quite different. It says that the setting is the shaded
3 area that's shown on that page --

4 MS. WARREN: Uh-huh.

5 MR. HARRIS: -- correct? And it was that version,
6 again, that wound up in the bound volume?

7 MS. WARREN: That's right.

8 MS. ROBESON: The page 2 or page 3 ends up --

9 MR. HARRIS: Page 3 wound up in the bound
10 volume --

11 MS. ROBESON: Okay.

12 MR. HARRIS: -- not page 2.

13 MS. ROBESON: Which page did you remove the tape
14 from?

15 MS. WARREN: Page 2.

16 MS. ROBESON: Page 2.

17 MR. HARRIS: So it appeared to be something that
18 someone was working on, trying to develop the language that
19 would ultimately go into the official appendix, that's
20 correct?

21 MS. WARREN: Yes.

22 MR. HARRIS: Okay. All right. Sorry about that.
23 I'm just trying to understand these documents a little bit.
24 I think you'd agree with me that, let's deal first -- well,
25 that there were changes that occurred throughout this

1 process to both the body of the master plan and to the
2 appendix.

3 MS. WARREN: There was one change, as I recall,
4 that occurred to the body.

5 MR. HARRIS: And more than one change to the
6 appendix, or one change to the appendix?

7 MS. WARREN: Well, the language that finally ended
8 up in the appendix came out of the March 25th worksession,
9 March 25th, 1999, and there was a further correction on that
10 made prior to May 12th, 1999. Nancy Sturgeon made one
11 correction from Clare Cavicchi original language in April.
12 She took out the word, I think, "approved." It's in my
13 testimony. She changed, she wrote, "The environmental
14 setting shown in the shaded area below is recommended only
15 if the special exception application by the Chelsea School
16 is approved." And then that language was changed, does not
17 go forward in that.

18 MR. HARRIS: But didn't it start out with a staff
19 draft in 1998 that says, "If the Chelsea School special
20 exception does not go forward," and wasn't it changed to,
21 "If approved," rather than what you just said was the
22 opposite?

23 MS. WARREN: What staff document are you referring
24 to in 1998?

25 MR. HARRIS: Well, let's, the staff draft of the

1 master plan.

2 MS. ROBESON: Is that in the record?

3 MR. HARRIS: In September 1998.

4 MS. ROBESON: Do you know which exhibit that is?

5 MR. HARRIS: I do not. She references --

6 MS. WARREN: September -- no.

7 MR. HARRIS: Okay.

8 MS. WARREN: No, I don't reference that.

9 MR. HARRIS: Okay. All right. Fine. Well --

10 MS. WARREN: You know why I don't reference that?

11 MR. HARRIS: Why is that? Why --

12 MS. WARREN: Was that the packet that was given to
13 the Historic Preservation Commission?

14 MS. ROBESON: Well, wait. It's --

15 MR. HARRIS: Why do you not reference the staff
16 draft of the plan released in September 1998?

17 MS. WARREN: Because I didn't find it in the
18 files.

19 MR. HARRIS: Okay. Well, I only have one copy of
20 this because I thought it was already in, but --

21 MS. WARREN: It might already be in, but it wasn't
22 in the files that were given to me.

23 MS. ROBESON: I don't think it's in.

24 MR. HARRIS: Okay. Well then, I'll show you
25 this --

1 MS. ROBESON: Well, no --

2 MR. HARRIS: -- and we can make, can we make
3 copies of it? I'll carry on and I'll put it in.

4 MS. ROBESON: Let me, can you bring, but first,
5 give it to Ms. Warren.

6 MS. WARREN: Yeah. I mean, I can only go on what
7 I was allowed to see.

8 MS. ROBESON: Where did you get it?

9 MS. WARREN: Yes.

10 MS. ROBESON: If she couldn't get it --

11 MR. HARRIS: I have a whole file on the master
12 plan. I was involved in it.

13 MS. WARREN: Well, I should --

14 MS. ROBESON: So these are your files?

15 MR. HARRIS: Yes.

16 MS. WARREN: Well then, I shouldn't have wasted
17 all that time at the archives.

18 MS. ROBESON: Okay. All right. All right.

19 MS. WARREN: I didn't even have a copy machine
20 there.

21 MS. ROBESON: Okay. Let's do this. I want to
22 give her a chance to read it.

23 MR. HARRIS: That's fine. It'll look very
24 familiar to her, but that's fine. I have no problem.

25 MS. ROBESON: Well, she said she never saw it.

1 MR. HARRIS: I understand but it's --

2 MS. ROBESON: I know, but --

3 MR. HARRIS: Okay. Okay.

4 MS. ROBESON: -- it's not in the record, and the
5 -- I'm going to take a five-minute break. All right? We'll
6 go off the record. Take your time and look over it for five
7 minutes. And we were supposed to have this stuff in the
8 record so, but it is part of the legislative history. So
9 we're going to take a five-minute break and give the
10 opposing parties a chance to look it over. Going off the
11 record. And I'm locked out.

12 (Whereupon, at 10:12 a.m., a brief recess was
13 taken.)

14 MS. ROBESON: I'm going to mark this as exhibit --
15 all right, I have to find my exhibit list -- Exhibit 338. I
16 think I've got the right list here. And this is the staff
17 draft of the appendix.

18 MR. HARRIS: Well, there are actually two
19 documents there, Ms. Robeson. 338 is a staff draft of the
20 master plan --

21 MS. ROBESON: Excerpts.

22 MR. HARRIS: -- then 339 is a separate document,
23 it'd be a staff draft of the appendix.

24 MS. ROBESON: Okay. 338 is staff draft of the
25 master plan. 339 is the staff draft of the appendix to the

1 master plan. Okay.

2 MR. BROWN: Ms. Robeson?

3 MS. ROBESON: Yes.

4 MR. BROWN: If these documents have any utility in
5 resolving the question about the change in the master plan
6 language at the critical time in March of 1999, which I
7 submit they don't, they should have been submitted as
8 rebuttal exhibits last Monday, and they weren't. And I
9 object to them on that basis.

10 MS. ROBESON: All right. Let's see, I haven't had
11 a chance to review them so I don't know what the point of
12 these documents is. So what's the point of these documents?

13 MR. HARRIS: We're not offering them as evidence
14 of what the adopted master plan has in it. To the contrary,
15 our position all along has been that --

16 MS. ROBESON: Okay. I know your position.

17 MR. HARRIS: -- all these historical documents
18 don't matter.

19 MS. ROBESON: They do, I disagree, so go ahead.

20 MR. HARRIS: Okay. But our, well then --

21 MS. ROBESON: So what's the point of these?

22 MR. HARRIS: To show -- Ms. Robeson just -- I
23 mean, Ms. Robeson -- Ms. Warren just testified that the
24 master plan started out saying that, "If the Chelsea School
25 special exception is not approved, 'X' happens." And then

1 it was changed to, "If the Chelsea School does not go
2 forward." I maintain that it was the opposite.

3 MS. WARREN: I object.

4 MS. ROBESON: Wait, wait.

5 MS. WARREN: I'm sorry.

6 MS. ROBESON: I'm asking him to --

7 MS. WARREN: Sorry.

8 MS. ROBESON: -- give me an idea where he's going.

9 MS. WARREN: Okay.

10 MS. ROBESON: It's --

11 MR. HARRIS: I maintain that it was the opposite.

12 Frankly, I think Ms. Warren will agree that it --

13 MS. ROBESON: Tell me the opposite scenario.

14 MR. HARRIS: That the language in the appendix
15 started out with, "If the Chelsea School special exception
16 does not go forward," and it was later changed to, "If the
17 special exception is not approved."

18 MS. ROBESON: Okay. Where did you go to find
19 these, to do your research?

20 MS. WARREN: The archives.

21 MS. ROBESON: What archives?

22 MS. WARREN: The Planning Board has an archives on
23 Layhill Road. But if I could just add something. That
24 wasn't my testimony. My testimony was that the special
25 exception, the language that came out of the March 25th,

1 1999, worksession --

2 MS. ROBESON: Yes.

3 MS. WARREN: -- that's the Planning Board
4 worksession, was originally drafted by Clare Reese (phonetic
5 sp.) Cavicchi --

6 MS. ROBESON: Right.

7 MS. WARREN: -- on October, April 27. This was to
8 reflect what the Planning Board decided. She included
9 there, in the event that the Chelsea School plan does not go
10 forward.

11 MS. ROBESON: Now --

12 MS. WARREN: It was Nancy Sturgeon that changed it
13 on this document to "is not approved." We have this
14 document.

15 MR. HARRIS: That's fine. I can have the
16 transcription read back, but I'm pretty clear you said just
17 the opposite. I'm fine if you want to acknowledge that the
18 language started out with "does not go forward," and later
19 changed to "is not approved."

20 MS. WARREN: Well, I think it depends where we are
21 starting from. Are we starting from HPC?

22 MS. ROBESON: Okay. Wait.

23 MR. HARRIS: Well --

24 MS. ROBESON: Wait. Stop it.

25 MS. WARREN: Yeah.

1 MS. ROBESON: Sorry. This is what I'm going to
2 do, because I, I'm going to, because it does go to the, it
3 sounds to me like it is going to the legislative history, so
4 I'm going to admit these two documents. Now, why don't you
5 finish your cross-examination, but I have some questions on
6 the time line.

7 MS. WARREN: Okay.

8 MS. ROBESON: These are, the staff draft is October
9 1998.

10 MR. HARRIS: No.

11 MS. WARREN: September.

12 MR. HARRIS: September 1998. The preliminary
13 draft is October 1998.

14 MS. ROBESON: Okay. But I don't have anything on
15 the preliminary draft in the record, do I?

16 MR. HARRIS: Yes, you do. You have Exhibit 2.

17 MS. ROBESON: I have her Exhibit 2, which you're
18 saying -- see, I want, I'm going to take your preliminary
19 draft and put it in the record.

20 MR. HARRIS: Okay. I can give you that as well.
21 Is that not in the record, Ms. Warren?

22 MS. ROBESON: No, it's not.

23 MR. HARRIS: Okay.

24 MS. ROBESON: If you're going to make an argument
25 that the printed version is not in the, the printed version

1 was different than what she submitted from the archives,
2 then I want that in the record.

3 MR. HARRIS: Fine. You can have it in the record.

4 MS. ROBESON: You can get it back after the case
5 ends.

6 MR. HARRIS: Okay. Okay.

7 MR. BROWN: We would --

8 MS. ROBESON: We don't --

9 MR. BROWN: We would like the opportunity to
10 respond to that document with perhaps a different bound
11 version, which I understand from my clients, may exist.

12 MS. ROBESON: Wait. There's another bound version
13 of this?

14 MS. SPIELBERG: Can I just speak? If I had known
15 all of this stuff was coming in, I would have come with
16 other documents, potentially. I think I may have, I would
17 just like to be able to go back and look in my records to
18 see how they responded to the documents Mr. Harris just
19 produced. Now, I feel like we've been disadvantaged by him
20 not --

21 MS. ROBESON: No, I agree.

22 MS. SPIELBERG: I'm just, you know --

23 MS. ROBESON: I don't think it was intentional. I
24 do think, you know, it might have been an oversight, but it
25 is important, and I see what you're saying.

1 MS. SPIELBERG: And unfortunately, I didn't bring
2 my entire file I had with me.

3 MS. ROBESON: I understand.

4 MR. HARRIS: I'll tell you what.

5 MS. SPIELBERG: And I may not need to --

6 MR. HARRIS: Forget Exhibit 338 and 339. I
7 withdraw them. I'm not offering them in evidence and I'm
8 not going to have any testimony. You can strike all my
9 testimony about that.

10 MS. ROBESON: Great.

11 MS. SPIELBERG: But this one is coming in?

12 MR. HARRIS: That, I'm not giving that, no.

13 MS. SPIELBERG: You're taking everything back?

14 MR. HARRIS: Taking everything back.

15 MS. ROBESON: You take it back?

16 MR. HARRIS: Yes, I take it back. It's not
17 necessary. Ms. Warren --

18 MS. WARREN: Yes.

19 MR. HARRIS: -- what this discussion over the last
20 number of minutes has shown, I think you would agree with
21 me, is that the archive records that you researched are not
22 necessarily complete or well-organized, is that correct?

23 MS. WARREN: I would say that's an understatement.

24 MR. HARRIS: Okay. Let's start with the
25 preliminary draft appendix. Your Exhibit 2 --

1 MS. WARREN: Okay.

2 MR. HARRIS: -- and 324. And --

3 MS. WARREN: Okay.

4 MR. HARRIS: -- looking at that, or whatever other
5 documents you want to look at --

6 MS. WARREN: Okay.

7 MR. HARRIS: -- would you agree with me that the
8 initial language in the appendix talks about in the event
9 that the Chelsea School plan does not go forward?

10 MS. WARREN: Yes.

11 MR. HARRIS: Yes, okay.

12 MS. WARREN: I can go back to, I can go --

13 MR. HARRIS: No, that's fine. I'll just --

14 MS. WARREN: Okay.

15 MR. HARRIS: I just want to establish where that
16 was. And then --

17 MS. WARREN: Okay.

18 MR. HARRIS: -- in the Planning Board draft,
19 later, your Exhibit 13 --

20 MS. WARREN: Okay.

21 MR. HARRIS: -- in the appendix to that plan --

22 MS. WARREN: Yes. This is the final.

23 MR. HARRIS: This is what the Planning Board sent
24 up to the Council.

25 MS. WARREN: Yes.

1

2

3

MR. HARRIS: This says, "In the event that the
Chelsea School plan is not approved."

4

MS. WARREN: Yes.

5

6

MR. HARRIS: Okay. That's all I was trying to
establish by all of this.

7

MS. WARREN: And, but you have the document --

8

MS. ROBESON: See how easy that was.

9

MR. HARRIS: I --

10

11

MS. WARREN: Yeah. And you have the document that
shows where the change came.

12

MR. HARRIS: I understand that.

13

MS. WARREN: Okay.

14

15

MR. HARRIS: And in fact, in the Planning Board
draft, your Exhibit 13 --

16

MS. WARREN: Uh-huh.

17

MR. HARRIS: -- to --

18

MS. ROBESON: That's our Exhibit 324M.

19

MR. HARRIS: 324M. Thank you.

20

MS. WARREN: Okay.

21

MR. HARRIS: In 324M --

22

MS. WARREN: Uh-huh.

23

MR. HARRIS: -- in the body of the master plan --

24

MS. WARREN: Yes.

25

MR. HARRIS: -- would you read for us the third

1 paragraph on the, in the right column there, the Riggs-
2 Thompson House?

3 MS. WARREN: "The Riggs-Thompson House is located
4 on a 1.4 acre parcel. The environmental setting is 37,056
5 square feet. A bridge garage constructed in the 1930s is
6 non-contributing. This resource meets criteria 1A, 1C, 1D,
7 and 2A."

8 MR. HARRIS: Okay. So already, at that time, the
9 language in the body of the plan was not the same as the
10 language in the appendix.

11 MS. WARREN: Exactly. And I show you where that
12 change occurred.

13 MR. HARRIS: And the appendix had evolved from,
14 "does not go forward" to "is not approved."

15 MS. WARREN: Yes.

16 MR. HARRIS: Would you agree with me that by
17 changing the appendix to "if the Chelsea School special
18 exception is not approved" from the previous language, "if
19 the Chelsea School plan does not go forward," made it a more
20 definable, specific point in time; that is, we would know if
21 and when the Chelsea School special exception is approved.
22 We might not know whether the Chelsea School special
23 exception, quote, "went forward or not."

24 MS. WARREN: I can't say what was in Nancy
25 Sturgeon's mind when she changed that language. I mean, I

1 think if you're interested in that, you should probably have
2 her here.

3 MR. HARRIS: Okay. There probably are a number of
4 things that we can't explain as to why, what people were
5 thinking. The documents just aren't going to be that
6 complete.

7 MS. WARREN: I guess. I mean, that's a question I
8 can't answer.

9 MR. HARRIS: You just said, we don't know what was
10 in her mind.

11 MS. WARREN: I said, and one, you asked me about a
12 specific case.

13 MR. HARRIS: Do you know what was in everyone's
14 mind when they were making these changes?

15 MS. WARREN: Of course not, no.

16 MR. HARRIS: No. Thank you. The body of the
17 master plan as well changed along with the appendix, didn't
18 it?

19 MS. WARREN: The body of the master plan language
20 was changed from what the Planning Board agreed on, yes.

21 MR. HARRIS: No, no, no. Let's, before that.

22 MS. WARREN: Yes.

23 MR. HARRIS: Didn't the language in the body of
24 the plan start out saying that the environmental setting is
25 37,000 square feet, but it may be changed if the property

1 redevelops.

2 MS. WARREN: "Modified" was the word they used.

3 MR. HARRIS: Modified. Okay. So it does say, it
4 says that it's 37,000 square feet, but it may be modified if
5 the property redevelops.

6 MS. WARREN: Yes, that was in October.

7 MR. HARRIS: And then by the time of the Planning
8 Board draft, that was changed to simply say, "It is 37,000
9 square feet."

10 MS. WARREN: No.

11 MR. HARRIS: Okay. Then let's look at this.

12 MS. WARREN: No. Look at the preliminary draft,
13 which was --

14 MS. ROBESON: That's 324B?

15 MR. HARRIS: The text of the preliminary draft?
16 We're talking about the body of the master plan, and I'm --

17 MS. WARREN: Yes.

18 MR. HARRIS: -- comparing the --

19 MS. ROBESON: Wait. Do I have the text of the
20 preliminary draft in the record? I see the preliminary
21 draft appendix, which is 324B and Ms. Warren's Exhibit 2.

22 MS. WARREN: We have to have that somewhere. Do
23 we not have the master plan with us? Okay.

24 MS. SPIELBERG: Which one?

25 MS. WARREN: The whole bound book.

1 MS. SPIELBERG: Wait just a minute. She's asking
2 about the preliminary.

3 MS. WARREN: The preliminary. Yeah. We don't
4 have a version of that.

5 MS. SPIELBERG: Let me think. Was that not
6 there?

7 MS. ROBESON: Where did you, how do you know what
8 the preliminary draft says if it's not in the record?

9 MR. HARRIS: As I indicated, I have a complete
10 file on the master plan. I was involved.

11 MS. ROBESON: But it's not in the record.

12 MR. HARRIS: I don't know.

13 MS. ROBESON: Ms. Warren?

14 MS. WARREN: Yes.

15 MS. ROBESON: Well, wait a minute.

16 MS. WARREN: I think we must have it in the
17 record. Unfortunately, I didn't bring mine with me either.
18 But I think we must have it in the record.

19 MS. ROBESON: Okay. So she can't answer you.

20 MR. HARRIS: No, she already has answered me, that
21 the language changed from a designation of 37,000 square
22 feet that may be modified --

23 MS. WARREN: Yes.

24 MR. HARRIS: -- if the property redevelops; two,
25 what is in the final Planning Board document exhibit.

1 MS. ROBESON: Is that correct, Ms. Warren?

2 MS. WARREN: Yes, it did change.

3 MS. ROBESON: Oh.

4 MR. HARRIS: Okay. So the --

5 MS. WARREN: I'm not disagreeing that that's the
6 final document.

7 MR. HARRIS: No, I understand. I'm not trying to
8 trap you on that.

9 MS. WARREN: That is the final document.

10 MR. HARRIS: You mention, at page 5 of your --

11 MS. WARREN: Testimony.

12 MR. HARRIS: -- of your testimony, page 5, down in
13 the last paragraph --

14 MS. WARREN: Uh-huh.

15 MR. HARRIS: -- that you haven't found evidence in
16 the record as to the language changed in the master plan.
17 By that, you mean in the body of the master plan?

18 MS. WARREN: Yes.

19 MR. HARRIS: Okay.

20 MS. WARREN: I had not found evidence that it was
21 a result of a directive by the Planning Board.

22 MR. HARRIS: But you certainly would accept that
23 the Planning Board has the right to recommend any language
24 they want to the Council in their final Planning Board
25 draft.

1 MS. WARREN: Yes. And I think they did. And that
2 language is not in the body in the master plan.

3 MR. HARRIS: Now, let's just, the body of the
4 master plan says that the setting is 37,056 square feet,
5 correct?

6 MS. WARREN: Yes, it does.

7 MR. HARRIS: Okay. And the Planning Board has the
8 right to make that recommendation to the County Council.

9 MS. WARREN: But that's not the recommendation
10 they made.

11 MR. HARRIS: It's, that's what's in, you're
12 telling me that this document that reads your exhibit, well,
13 Exhibit 324M, that says Planning Board draft, is not the
14 Planning Board's draft?

15 MS. WARREN: What I'm telling you is that language
16 was altered without the knowledge of the Planning Board.

17 MR. HARRIS: Well, we already know that you didn't
18 find a number of documents in the file, so clearly, you
19 don't have every piece of paper and notes of every meeting
20 that went on. How can you say that it didn't happen when it
21 did happen; it's here in print, and you've admitted that you
22 can't find some documents?

23 MS. WARREN: Mr. Harris, may I remind you, the
24 Planning Board had every opportunity to rebut my testimony
25 at the Planning Board hearing. They have every document.

1 They have every person who worked on that master plan at
2 their disposal. They offered absolutely nothing.

3 MR. HARRIS: They rejected your position.

4
5 MS. WARREN: They did not reject my position.
6 They said the only intent that mattered was the intent of
7 the Council, which is why I went to the County Council
8 documents and researched what the intent of Council was.
9 You know that Francoise asked one question. She asked,
10 "What was the intent of the County Council?"

11 MR. HARRIS: Did they have all of the documents
12 that you submitted to them? Did the Planning Board have all
13 of your documents when they considered this on January 26th?

14 MS. WARREN: No, they did not have the documents
15 from my County Council research because I did it subsequent
16 to her --

17 MR. HARRIS: Well, that's --

18 MS. WARREN: -- asking me the question.

19 MR. HARRIS: Okay. But the County Council, we're
20 talking about at the Planning Board level. Did the, on
21 January 26th, did the Planning Board have all of your
22 documents regarding this master plan with respect to
23 deliberations and recommendations by the Planning Board?

24 MS. WARREN: Yes, they did. And Mr. Orobona had
25 access to all of those documents for the 77 days that I

1 didn't. And apparently, you did too.

2 MR. HARRIS: Well, back to my prior question.
3 Your position is that a document in the file, 324M, that
4 says Planning Board draft is not what the Planning Board
5 recommended to the Council.

6 MR. BROWN: Argumentative.

7 MS. ROBESON: I agree.

8 MR. HARRIS: No, that's a "yes" or "no" --

9 MS. ROBESON: I agree. Overruled, I mean,
10 sustained.

11 MR. HARRIS: Did the Planning Board send Exhibit
12 324M --

13 MS. ROBESON: She's already admitted that, Mr.
14 Harris. You're the, I don't want to curtail cross-
15 examination, but you're the one that's in the time crunch.
16 So she's already said that that's the adopted plan the
17 Planning Board adopted.

18 MR. HARRIS: Fine. That's all I'm trying to
19 establish. I didn't think she was clear on that.

20 MS. ROBESON: I did.

21 MR. HARRIS: Okay. Then that's doubly clear.

22 MS. ROBESON: Is that the plan that the Planning
23 Board adopted? Well, maybe she wasn't, so go ahead --

24 MS. WARREN: The word "adopted," we can't use the
25 word "adopted." It's the --

1 MS. ROBESON: Why not?

2 MS. WARREN: Because it's not what they believed
3 went forward. So they adopted --

4 MS. ROBESON: Okay. So your testimony is that the
5 Planning Board really, your position is that the plaintiff
6 was not aware of the language change --

7 MS. WARREN: Exactly.

8 MS. ROBESON: -- and therefore, they approved a
9 plan with the change that wasn't necessarily reflective of
10 their intent. Is that your testimony?

11 MS. WARREN: Exactly.

12 MS. ROBESON: Okay.

13 MR. HARRIS: Are you suggesting that they can't
14 read?

15 MS. ROBESON: Mr. Harris --

16 MR. HARRIS: I'm --

17 MS. ROBESON: -- they can read --

18 MR. HARRIS: They --

19 MS. ROBESON: -- I can read.

20 MR. HARRIS: They sent --

21 MS. ROBESON: Stop it. No.

22 MR. HARRIS: Then sent the plan to the Council.

23 MS. ROBESON: I don't care. She --

24 MR. HARRIS: Well --

25 MS. ROBESON: You've got, she just testified as to

1 what her position is. You can sit here and argue all day
2 with her, but it's argumentative.

3 MR. HARRIS: Okay. Then let me ask this. You
4 said that they didn't believe that that's what they were
5 sending, or something to that effect. Is that what you
6 said?

7 MS. WARREN: I'm going to say it very clearly.
8 I'm going to say that the Planning Board agreed to language.
9 They directed staff to write that language. The language
10 was written. It was changed once by Nancy Sturgeon. That
11 language was sent up to the public. That language was sent
12 to everyone who needed to see the language. The Planning
13 Board agreed on that language. They voted on it. When it
14 came time in between the preliminary plan and the final
15 draft, that language was changed. It was never pointed out
16 to them in the November 4th, 1999 worksession. When all
17 changes were pointed out to them, that change was not
18 pointed out. And nobody but me ever went back and compared
19 what they agreed on with what was in the final draft.

20 MR. HARRIS: So it had to either have been
21 ignorance or something untoward. And I don't think you're
22 suggesting either of those. I just --

23 MS. WARREN: I'm not --

24 MR. HARRIS: I don't find any evidence, nor do I
25 know how you can know, what the Planning Board believed.

1 MS. WARREN: There is a process that goes into the
2 master plan. It involves the public, it involves
3 transparency, it involves letting people know what is being
4 decided every step of the way so they have the opportunity
5 to comment. At the end of that process, the Planning Board
6 agreed, they voted on certain language. That language is
7 not in the body of the master plan. It was changed on October
8 28th, prior to 1999, and they were never made aware of the
9 fact that the language was changed.

10 MR. HARRIS: You couldn't find evidence that they
11 were made aware of it. I have --

12 MS. WARREN: The Planning Board couldn't present
13 evidence.

14 MS. ROBESON: I thought you weren't going to refer
15 to what you have.

16 MS. WARREN: You're not presenting evidence.

17 MR. HARRIS: I'm not following. I beg your
18 pardon. She's alleging that the Planning Board was not
19 aware of something.

20 MS. ROBESON: Yes.

21 MR. HARRIS: But yet, we have the document that
22 they sent, we have to assume they were aware of it.

23 MS. ROBESON: We're not referring to what they
24 sent to the --

25 MR. HARRIS: Yes, that's --

1 MS. ROBESON: Is that the one that's not in the
2 record?

3 MR. HARRIS: That's 324M. That's what they --

4 MS. ROBESON: 324M. Okay.

5 MR. HARRIS: 324M is what they sent to the
6 Council.

7 MS. ROBESON: Okay.

8 MR. HARRIS: While Ms. Warren maintains that the
9 Planning Board didn't know that what this language said --

10 MS. ROBESON: Okay. But I --

11 MR. HARRIS: -- I maintain they must have.

12 MS. ROBESON: I guess what I'm getting at is, why
13 are we, I get the point. I get your point on cross-
14 examination. So why, what else do you want to elicit from
15 her?

16 MR. HARRIS: I think the point has been made,
17 that -

18 MS. ROBESON: I do too.

19 MR. HARRIS: -- she has no evidence that they
20 didn't know what they were doing.

21 MS. ROBESON: Well, that is something, you can --

22 MR. HARRIS: Okay.

23 MS. ROBESON: -- save it for closing argument now.

24 MR. HARRIS: Okay.

25 MS. ROBESON: But I was just trying, I'm trying to

1 move this along.

2 MR. HARRIS: I --

3 MS. ROBESON: I totally understand both points.

4 She's saying it was an oversight, that they weren't aware.

5 And your position is, "Hey, they adopted the plan, you know,
6 they had to have known what they were doing."

7 MR. HARRIS: Fine. And there's no evidence either
8 way.

9 MS. ROBESON: Well, I'm not going to go there.

10 MR. HARRIS: Well, okay.

11 MS. ROBESON: You can make that --

12 MR. HARRIS: Okay. What --

13 MS. ROBESON: You can make that in your closing.

14 MR. HARRIS: Then what evidence, Ms. Warren, do
15 you have that they didn't know what they were doing?

16 MR. BROWN: I object to the question. We've been
17 over this --

18 MS. ROBESON: Yes. I --

19 MR. BROWN: -- four times, now.

20 MR. HARRIS: Well, I haven't seen any evidence.

21 MS. ROBESON: She already said, she already told
22 you, Mr. Harris, that -- do you know, have any evidence as
23 to why that language was deleted?

24 MS. WARREN: I couldn't find any evidence in the
25 public record that the Planning Board ever directed that

1 change in language.

2 MS. ROBESON: Oh, well, do you have any evidence
3 at all as to why the change occurred?

4 MS. WARREN: Not that I was able to find in the
5 public record.

6 MS. ROBESON: All right.

7 MS. WARREN: But I would also say that there was
8 no evidence presented by the Planning Board at the Planning
9 Board hearing.

10 MR. HARRIS: There's --

11 MS. ROBESON: I understand.

12 MS. WARREN: Okay. So if the evidence exists --

13 MR. HARRIS: You don't maintain that it was the
14 Planning Board's obligation at the Planning Board hearing to
15 provide you evidence as to what they did then.

16 MS. WARREN: I think it's the Planning Board's
17 obligation to explain if the Planning Board made a change
18 prior, in between the preliminary draft and the final draft,
19 I think, yes, I think it was their obligation as part of the
20 master plan process to make that information available in
21 the public record.

22 MR. HARRIS: You --

23 MS. WARREN: We need to know why.

24 MR. HARRIS: You've already admitted to me that
25 you're, this was the first time you've ever looked into

1 these proceedings. You also admitted to me earlier that
2 changes occur throughout the process. The fact that you
3 can't find a printed document that explains the change
4 doesn't mean it didn't occur.

5 MS. ROBESON: Is that a question?

6 MR. HARRIS: Never mind. Strike that.

7 MS. WARREN: I don't think it's a question; I
8 think it's a comment on my professional abilities.

9 MR. HARRIS: No, no, no.

10 MS. ROBESON: No, no --No, no, no.

11 MS. ROBESON: Okay. Okay. Mr. Harris --

12 MR. HARRIS: Another series of questions. Point
13 made. Let's go to your memo, your testimony.

14 MS. WARREN: Okay.

15 MR. HARRIS: Okay? The bottom of the first, the
16 second paragraph --

17 MS. WARREN: Okay.

18 MR. HARRIS: -- you said that, "It was always the
19 intent of the master plan that if the Chelsea School was no
20 longer part of the Chelsea School site, the size of the
21 setting would be 1.4 acres." First of all, there was no
22 longer part in any of the documents that we found, that you
23 found, or that I've referenced, the words "was no --

24 MS. ROBESON: That are in the record.

25 MR. HARRIS: That are in the record -- the words

1 "was no longer part of the Chelsea School site." Those
2 words are not found anywhere, are they? Those are your
3 words.

4 MS. WARREN: Which paragraph are you on?

5 MR. HARRIS: Last --

6 MR. BROWN: Right here, right here.

7 MR. HARRIS: -- two lines of --

8 MR. BROWN: First page.

9 MR. HARRIS: -- the second paragraph on the first
10 page.

11 MS. WARREN: Oh, first page. I thought you said
12 second page. Is that in quotes?

13 MR. HARRIS: No, it's not in quotes.

14 MS. WARREN: Then it's my words.

15 MR. HARRIS: Those are you words.

16 MS. WARREN: Yes.

17 MR. HARRIS: Your interpretation.

18 MS. WARREN: Yes.

19 MR. HARRIS: Okay. And the same would be true on
20 page 2 of that same document, at the bottom of the second
21 full paragraph. Let's see, "Thus the size of the parcel is
22 1.4 acres if and when the Chelsea School no longer occupies
23 the property." Again, those words are not anywhere in the
24 documents that are in the record.

25 MS. WARREN: Those are my words. They're not --

1 MR. HARRIS: Okay.

2 MS. WARREN: -- in quotes, they're not attributed
3 to anyone else.

4 MR. HARRIS: Right. So that's your interpretation
5 of what the documents say.

6 MS. WARREN: Yes, those are my words.

7 MR. HARRIS: Okay. And then again --

8 MS. WARREN: If it's not in quotes and it's not
9 attributed, it's my words.

10 MR. HARRIS: Page 7, the full paragraph there, at
11 the bottom. I assume your answer will be the same. This
12 one says that, "The application of which was dependent on
13 whether or not the Chelsea School special exception was in
14 place." That last line of the first full paragraph.

15 MS. WARREN: Last line of the first full
16 paragraph. It's not in quotes. Those are my words.

17 MR. HARRIS: So --

18 MS. WARREN: It's not attributed.

19 MR. HARRIS: Yes. Okay. And then lastly, on page
20 9, in the middle of the conclusory paragraph there --

21 MS. WARREN: In the middle of what? I'm sorry.

22 MR. HARRIS: The last full paragraph down here --

23 MS. WARREN: Yes.

24 MR. HARRIS: -- down about a little more than
25 halfway.

1 MS. WARREN: That entire paragraph is not in
2 quotes.

3 MR. HARRIS: Okay. So those are your words and
4 your interpretation?

5 MS. WARREN: Yes.

6 MR. HARRIS: Okay. And throughout your research,
7 you have found nothing that says that, "If the Chelsea
8 School special exception is approved, they buy the site and
9 12 years later, they decide to sell, that the setting
10 changes from 37,000 to 1.4 acres." There's no document that
11 says that.

12 MS. WARREN: I would refer you back to the
13 audiotape of March 25th, 1999, in which the staff person
14 directs the Council that --

15 MR. HARRIS: Is that in your documents there?

16 MS. WARREN: You have the entire transcript. It's
17 also --

18 MR. HARRIS: Okay.

19 MS. WARREN: -- referred to in my testimony.

20 MR. HARRIS: Well, let's look at that.

21 MS. WARREN: The quote is on page 4 --

22 MR. HARRIS: Page 4. Is this --

23 MS. WARREN: -- of my testimony.

24 MR. HARRIS: Is this Exhibit 6 to your testimony,
25 or there were two transcripts there.

1 MS. WARREN: The --

2 MR. HARRIS: I think.

3 MS. WARREN: Yeah, there are two transcripts. One
4 is March 25th. That would be 324F, and I'll read you --

5 MR. HARRIS: Wait. Hold on. Bear with me. Mine
6 aren't marked that way, and I'm trying to make sure I have
7 it.

8 MR. BROWN: It's 6.

9 MR. HARRIS: And it isn't dated.

10 MR. BROWN: It is.

11 MS. WARREN: It's Exhibit 6.

12 MR. HARRIS: Exhibit 6. Thank you, Dave.

13 MS. WARREN: Page 15.

14 MR. HARRIS: Okay. Page 15? I'm sorry.

15 MS. WARREN: Uh-huh.

16 MR. HARRIS: Okay.

17 MS. WARREN: And staff instructs the Planning
18 Board. Essentially, what the plan is suggesting is a sort
19 of either/or, either/either/or environmental setting, which
20 is that if the special exception doesn't go forward, if this
21 property remains in its current ownership, its current use
22 or some other use, then the setting should be our normal
23 process, the 1.4 acre parcel on which it's located.

24 MR. HARRIS: Okay. But what happened was --

25 MS. ROBESON: What page? I'm sorry. What page

1 was that?

2 MR. HARRIS: 15.

3 MS. WARREN: 15.

4 MS. ROBESON: Okay. I'm sorry. Go ahead.

5 MS. WARREN: Okay. I can't read either --

6 MR. HARRIS: And then it goes on to say --

7 MS. WARREN: -- without my glasses.

8 MR. HARRIS: -- "However, if the Chelsea School
9 was to go forward, it would be appropriate to have a setting
10 be that smaller area depicted in pink and shown in the
11 shaded," correct?

12 MS. WARREN: Yes. It was always the, the smaller
13 area has always been tied to the Chelsea School,
14 specifically only to the Chelsea School.

15 MR. HARRIS: Well, tie to it being approved.

16 MS. WARREN: Tied to a special exception for the
17 Chelsea School being approved.

18 MR. HARRIS: Right. And the Chelsea School
19 special exception was approved, in fact.

20 MS. WARREN: It was approved, it was used, and now
21 it's being abandoned.

22 MR. HARRIS: So the setting became, or the 37,000
23 square foot setting was confirmed when the Chelsea School
24 got its special exception.

25 MS. WARREN: The setting was reduced for the

1 Chelsea School's use.

2 MR. HARRIS: "Reduced" is your word. I maintain
3 it was never 1.4 acres.

4 MS. ROBESON: Well --

5 MS. WARREN: Yes.

6 MR. HARRIS: Yes.

7 MS. ROBESON: -- you got to ask her a question.

8 MS. WARREN: Yeah.

9 MR. HARRIS: Okay. Was it ever created as 1.4
10 acres or only proposed?

11 MR. HARRIS: Well, there was that mistaken
12 language twice in both the hearing of the Historic
13 Preservation Commission where Clare told them it was 1.4
14 they were voting on, and then corrected herself. And then
15 there was the page that was taped over. So yes, you'd have
16 to say, at one point in time, two points in time, it existed
17 as 1.4.

18 MR. HARRIS: Wasn't it --

19 MS. WARREN: Brief and corrected.

20 MR. HARRIS: Wasn't it the Council's adoption of
21 the master plan in 2000 that, for the first time,
22 established the historic setting?

23 MS. WARREN: I guess I would have to go to, what
24 do you mean by "established"?

25 MR. HARRIS: Isn't an historic setting established

1 only by the adoption of a master plan?

2 MS. WARREN: That's a question I couldn't answer.

3 MR. HARRIS: Okay. If --

4 MS. WARREN: That would have to be --

5 MR. HARRIS: If it turns out --

6 MS. WARREN: -- for Judy.

7 MR. HARRIS: -- that that is the case, and the
8 master plan were not adopted to -- and you know that the
9 master plan was not adopted until 2000, right?

10 MS. WARREN: August 1st, 2000.

11 MR. HARRIS: So that if it turns out that the
12 historic setting is only created by a master plan adoption,
13 and the master plan adoption were August 2000, wouldn't you
14 agree with me that under those assumptions, that the
15 historic setting was only established on August 1, 2000?
16 Everything prior to that was a proposal.

17 MS. WARREN: Yeah. I don't, I can't answer.
18 You're asking me for a legal interpretation --

19 MR. HARRIS: Okay.

20 MS. WARREN: -- of the word "established."

21 MR. HARRIS: Fine.

22 MS. ROBESON: Yes, it is.

23 MR. HARRIS: Fine.

24 MS. WARREN: Yeah.

25 MR. HARRIS: Okay.

1 MS. WARREN: Now, you're getting into territory
2 that's --

3 MR. HARRIS: Okay. But irrespective of whether
4 you believe, or you're unsure when it's established, there
5 is nothing that says that if the Chelsea School special
6 exception is approved and they buy the site, 12 years later,
7 it becomes 1.4 acres.

8 MS. WARREN: Well, I would disagree. I think
9 there is something. I think that that language, in that
10 staff, when the staff was directing the Planning Board, they
11 were saying, "Okay, this is what's going to happen." And
12 the Planning Board said, "Okay. Well then, we'll, you know,
13 we'll go along with that."

14 MR. HARRIS: Couldn't, if they wanted it to become
15 1.4 acres after the Chelsea School special exception is
16 established or approved, couldn't they have said that in a
17 plan?

18 MS. WARREN: You're saying -- I don't understand
19 your question.

20 MR. HARRIS: Okay. I think we both agree that if
21 the language in the plan, even if you go to the appendix
22 where it's a conditional provision, the condition is that if
23 the Chelsea School special exception is approved, the
24 setting is 37,056 square feet, right?

25 MS. WARREN: Yes. It also says if it's denied,

1 then it reverts back to the 1.4.

2 MR. HARRIS: But it wasn't denied, was it?

3 MS. WARREN: I'm not sure that you can't, you
4 can't interpret denial and abandonment to be the same,
5 because the condition at the end of denial and/or
6 abandonment is the same. We're left with the same condition
7 if the Chelsea School exception had been denied. We have
8 the same condition today.

9 MR. HARRIS: That's your opinion, but that wasn't
10 the Planning Board's opinion, was it?

11 MS. WARREN: We don't know what their opinion is.

12 MR. HARRIS: Well, they sent it to the hearing
13 examiner, saying that it's 1.4 acres.

14 MS. ROBESON: Well, I know what the Planning --

15 MS. WARREN: No, she still asked the question.
16 What was the, she said the only thing that mattered was the
17 intent of Council, of the County Council.

18 MR. HARRIS: Okay. Let's go --

19 MS. WARREN: And now we've gone and we've found
20 information on the intent of the County Council.

21 MR. HARRIS: Let's go to the County Council.

22 MS. WARREN: Okay. Let's go there.

23 MR. HARRIS: And the County Council process is
24 basically a, they start from scratch almost, they take what
25 has been recommended to them by the Planning Board, the

1 Planning Board draft, and then they'll have a hearing and
2 discussions, and they can make changes to any provision of
3 it that they want, correct?

4 MS. WARREN: Yes, they can.

5 MR. HARRIS: And what they started with was the
6 Planning Board draft, correct?

7 MS. WARREN: They started with more than that. In
8 the files, in addition --

9 MR. HARRIS: Well, did they start with the
10 Planning Board draft? Exhibit 324M. That's what they had
11 prior to the public hearing.

12 MS. WARREN: They had that --

13 MR. HARRIS: Okay.

14 MS. WARREN: -- and they had additional materials.

15 MR. HARRIS: Okay. And --

16 MS. WARREN: Included in their files was the
17 packet that had been prepared --

18 MR. HARRIS: Now, you're getting ahead. Let's --

19 MS. WARREN: Okay.

20 MR. HARRIS: -- go sequentially --

21 MS. WARREN: Okay.

22 MR. HARRIS: -- at the Council level.

23 MS. WARREN: All right.

24 MR. HARRIS: So it starts with the Planning Board
25 draft coming to the Council. Then they have a public

1 hearing, right?

2 MS. WARREN: Well, at what point are you going to
3 give them the additional documents that they had?

4 MS. ROBESON: Well, let, just -- okay. Just
5 answer his questions. That'll be easier.

6 MR. HARRIS: The --

7 MS. ROBESON: Because I think he is, Mr. Harris,
8 are you going to acknowledge there were additional documents
9 other than the draft, the Planning Board's draft?

10 MR. HARRIS: Yes.

11 MS. ROBESON: Okay. So he's going to get there.

12 MS. WARREN: Okay. But again, he's asking me
13 questions about a legal process --

14 MS. ROBESON: Well, but that's --

15 MS. WARREN: -- which he -- okay. All right.

16 MS. ROBESON: It's a legal --

17 MS. WARREN: He knows more about it than I do.

18 MS. ROBESON: No. Well, if you feel like you
19 can't answer, say yes, but this, I think, is a factual --

20 MS. WARREN: Okay.

21 MS. ROBESON: -- the sequence is factual.

22 MR. HARRIS: So the sequence is, first, the
23 Planning Board draft, Exhibit 324M comes to them.

24 MS. WARREN: Oh, wait. You know what? Actually,
25 hold on one second. I have the exact sequence here. I have

1 it. Okay.

2 MR. HARRIS: Okay.

3 MS. WARREN: Okay.

4 MR. HARRIS: Is that one of your documents in
5 the --

6 MS. WARREN: No. I didn't feel I needed to put
7 this in the record. This was just --

8 MS. ROBESON: Are those your notes of the
9 sequence? Oh, is that the page from the Council packet?

10 MS. WARREN: Yeah, this is just a Xerox to tell me
11 everything that happened each step of the way.

12 MS. ROBESON: Okay. Are you just going to refer
13 to that --

14 MS. WARREN: Well, I just --

15 MS. ROBESON: -- to refresh your memory?

16 MS. WARREN: No, I just want this for his
17 questions, because he's asking me questions now on process.

18 MR. HARRIS: Let's not, it's the second page of
19 Exhibit 17 of hers, which would be 324 something or other.
20 I think that's right.

21 MS. WARREN: Okay.

22 MR. HARRIS: Is that what you're referring to?
23 Oh, even better. Thank you, Anne.

24 MS. WARREN: Okay.

25 MR. HARRIS: It's -- Anne's on top of things --

1 it's in the, the --

2 MS. WARREN: Okay.

3 MR. HARRIS: -- the plan. Okay. So --

4 MS. ROBESON: It's in the adopted master plan.

5 MR. HARRIS: Correct.

6 MS. WARREN: Yes.

7 MR. HARRIS: Correct.

8 MS. WARREN: Okay.

9 MS. ROBESON: It's a Council resolution.

10 MR. HARRIS: Yes. So --

11 MS. ROBESON: -- adopting the master plan.

12 MR. HARRIS: So it starts with the Planning Board
13 draft, 324M --

14 MS. WARREN: Uh-huh.

15 MR. HARRIS: -- coming to them, correct?

16 MS. WARREN: Uh-huh. Yes.

17 MR. HARRIS: And then they held a public hearing
18 on May 9th --

19 MS. WARREN: Yes.

20 MR. HARRIS: -- correct?

21 MS. WARREN: Yes.

22 MR. HARRIS: And at that time, Mr. Elmendorf told
23 them that the Chelsea School special exception had been
24 approved. Your Exhibit 15.

25 MS. WARREN: Okay.

1 MS. ROBESON: Which is 3240.

2 MR. HARRIS: 3240. Thank you for keeping me on
3 track of this. 3240. Page 1, 2, the fourth page of that
4 exhibit, in lines 17, 16, 17, and 18. He says, "We're happy
5 to report that about a month ago, we received approval for
6 not just the existing campus, but the expansion on the
7 campus," correct?

8 MS. WARREN: What page are you on?

9 MR. HARRIS: Page 53 of the transcript.

10 MS. WARREN: Okay.

11 MR. HARRIS: Lines 16, 17, 18. That's at 14.

12 MS. ROBESON: Is that the --

13 MS. WARREN: Yes. "We're happy to report that a
14 month ago, we received approval for not just the existing
15 campus, but the expansion."

16 MR. HARRIS: Okay. You with us, Ms. Robeson?

17 MS. ROBESON: Yes, I am.

18 MR. HARRIS: Okay. Okay. So on May 9th, the full
19 Council heard that the special exception had been granted.

20 MS. WARREN: That's right.

21 MR. HARRIS: At that time, they had before them a
22 document that says, in the body, the, it says that, "The
23 setting is 37,056 square feet," period. If you go to the
24 appendix, it says, "It's 37,056 square feet if the Chelsea
25 School special exception is approved," correct?

1 MS. WARREN: Yes.

2 MR. HARRIS: And so as of May 9, they were told
3 that the Chelsea School special exception was approved, so
4 they necessarily were operating with that knowledge. And so
5 wouldn't you agree with me that, in effect then, given that
6 the, even if you use the appendix as the guide, not the body
7 of the plan, but the appendix, even if you use that, as of
8 the Council's hearing, they knew that by adopting that
9 master plan, the setting would be 37,000, because then if
10 that's the condition precedent had already been met, the
11 approval of the special exception had already been
12 accomplished.

13 MS. WARREN: You're asking me to say whether or
14 not the Council had read the plan at that point and knew
15 this for a fact?

16 MR. HARRIS: I'm assuming they had read it. Do
17 you know that they didn't?

18 MS. WARREN: I really can't assume anything.

19 MR. HARRIS: Okay. Do you believe they read it
20 after the hearing?

21 MS. WARREN: I believe that what they read is
22 Exhibit 16, which is the memo that was prepared for them by
23 their legislative analyst, Jean Arthur.

24 MR. HARRIS: And they would have read that, but
25 not the plan?

1 MS. WARREN: I can't say that they didn't read
2 both. I don't know them well enough to make that kind of
3 judgment. But just from what I've seen, the work of the
4 legislative analyst is to condense things, and to summarize
5 it, and to give the Council the information they need before
6 they go into hearings, such as the fed committee hearing
7 that they were about to go into in June.

8 MR. HARRIS: So you don't know whether they read
9 the plan or not?

10 MS. WARREN: I don't.

11 MR. HARRIS: But you're assuming they didn't?

12 MS. WARREN: All I can say, Mr. Harris, is that
13 the fact that the language was changed in the master plan
14 and did not reflect either the Planning Board's vote or what
15 Jean Arthur read, the fact wrote for them; the fact that all
16 of these things happened and nobody compared the exact
17 language leads me to believe that until I sat down and did
18 this, no one compared the exact language.

19 MR. HARRIS: But you have no evidence that the
20 Council didn't compare the language, you have speculation.

21 MS. WARREN: If the Council compared the language,
22 why didn't anyone figure out that it didn't match?

23 MR. HARRIS: Well, why didn't Jean Arthur figure
24 out that it didn't match?

25 MS. WARREN: Exactly. And that's how I ended up

1 interviewing her.

2 MR. HARRIS: Okay.

3 MS. WARREN: I couldn't believe it.

4 MR. HARRIS: Maybe Jean Arthur made a mistake.

5 Maybe she --

6 MS. WARREN: Or she read the other --

7 MR. HARRIS: Maybe she didn't read the master
8 plan.

9 MS. WARREN: Maybe she didn't. Maybe she just
10 relied on, maybe she relied on what someone told her. I
11 don't know.

12 MS. ROBESON: Well, okay.

13 MS. WARREN: Yeah, I interviewed her. That's all
14 I can tell you.

15 MR. HARRIS: In any respect, Jean Arthur's memo,
16 Exhibit 16 --

17 MS. WARREN: Uh-huh.

18 MR. HARRIS: -- which would be 324 --

19 MS. ROBESON: P.

20 MR. HARRIS: T? Thank you.

21 MS. ROBESON: P. P, as in Paul.

22 MR. HARRIS: P? P, as in Paul? 324P. Thank you.
23 Her memo was not correct, is it?

24 MS. WARREN: Define the word "correct."

25 MR. HARRIS: She says, "The plan recommends an

1 environmental setting of 37,056 square feet for the
2 immediate area surrounding the house, assuming the special
3 exception is approved." Well, for one thing, my June 5, the
4 special exception has already been approved, hasn't it?

5 MS. WARREN: It has been approved by that point.

6 MR. HARRIS: And she's not quoting from the body
7 of the master plan; she's summarizing the appendix, correct?

8 MS. WARREN: Again, you never went back to the
9 other documents that she was given. And I go back to the
10 fact that she was given a packet relating to the Riggs-
11 Thompson House in its environmental setting, a packet that
12 had been prepared for the Planning Board's worksession on
13 March 25th, 1999. In the files of the County Council was
14 that packet. She may have been relying on that information.

15 MR. HARRIS: Well then, she would have been
16 relying on outdated information because that was more than a
17 year old and already changes had occurred at the Planning
18 Board, hadn't they?

19 MS. WARREN: One word was changed in the appendix,
20 yes. Well, from, "to not go forward" to "approved."

21 MR. HARRIS: Well, and she's not quoting from the
22 Planning Board draft that says the, in the body, that it
23 says it's 37,056 square feet. She completely ignores that
24 provision, right?

25 MS. WARREN: Well, it's not in her memo.

1 MR. HARRIS: It's not in her memo, that's right.

2 MS. WARREN: That's right. I could be that she
3 talked to somebody.

4 MR. HARRIS: A lot of things --

5 MS. WARREN: She could --

6 MR. HARRIS: -- could have happened.

7 MS. WARREN: Yeah. Yeah. She doesn't know. She
8 went back --

9 MR. HARRIS: She doesn't --

10 MS. WARREN: -- through all of her documents.

11 MR. HARRIS: She doesn't know. I accept that.

12 Exhibit 17 of yours, that's going to be 324 --

13 MR. BROWN: Q.

14 MS. ROBESON: Q.

15 MR. HARRIS: Q. Thank you. That's a subsequent
16 memo -- back up. Jean Arthur's memo was to the fed
17 committee, correct?

18 MS. WARREN: Yes.

19 MR. HARRIS: 324P was going to the fed committee,
20 that's only three members of the Council, correct?

21 MS. WARREN: Yes.

22 MR. HARRIS: But 324Q, Marlene Michaelson's memo,
23 a month and a half later, July 20th, is going to the full
24 Council, correct?

25 MS. WARREN: Yes, that's what it says.

1 MR. HARRIS: And in that, she notes that she's
2 attaching the draft that reflects all Council recommended
3 substantive changes, okay, correct?

4 MS. WARREN: Yes.

5 MR. HARRIS: And she invites them to offer any
6 comments that they want to give for further changes by July
7 26, correct?

8 MS. WARREN: Yes.

9 MR. HARRIS: And that the staff, after that, the
10 staff will make technical or editorial changes and bring the
11 whole thing back to them on August 1, correct?

12 MS. WARREN: Yes.

13 MR. HARRIS: Okay. So at that time, Marlene was
14 sending to them the language where the body of the master
15 plan says, period, 37,056 square feet, and invites them to
16 make any changes they want, correct?

17 MS. WARREN: As far as I know, that was attached,
18 yes.

19 MR. HARRIS: And there is no evidence that any
20 Council member suggested changing the body of the master
21 plan to read anything other than the statement that the
22 setting is 37,056 square feet.

23 MS. WARREN: I found no evidence.

24 MR. HARRIS: And in fact, at that time, given that
25 the Chelsea School special exception had already been

1 approved, and they were aware of that, to the extent they
2 might have looked at the appendix, it wouldn't have made any
3 difference because the two were synonymous at that point,
4 the special exception having been granted, right?

5 MS. WARREN: The special exception was granted to
6 the Chelsea School.

7 MR. HARRIS: And so they didn't have to change the
8 text. Now, you mention in your memo as well --

9 MS. WARREN: Actually, it's ironic that they
10 didn't change the text then.

11 MR. HARRIS: Beg pardon?

12 MS. WARREN: If the special exception had been
13 approved, they could have gone in and taken out the second
14 line. They didn't do that either. They didn't take --

15 MR. HARRIS: In the appendix. There was no second
16 line in the body of the master plan.

17 MS. WARREN: We've --

18 MR. HARRIS: It simply says the setting --

19 MS. WARREN: We've already been over that.

20 MR. HARRIS: Correct?

21 MS. WARREN: We've already been over that, yes.

22 MR. HARRIS: Yes, so the master plan just says
23 37,000, so there's no need to make a change to that.

24 MS. WARREN: There was no need, but they could
25 have made a change to the appendix. They didn't do that

1 either.

2 MR. HARRIS: They could have made a change to the
3 appendix if they thought it was necessary.

4 MS. WARREN: Or maybe they wanted always for the
5 smaller environmental setting to be tied to the special
6 exception. And if it was denied which, in my opinion, is
7 similar to abandonment, then it would revert back.

8 MR. HARRIS: They would have wanted the appendix
9 to take precedence over the language in the master plan. Is
10 that really what you're maintaining?

11 MS. WARREN: It could be. I'm -- MR.
12 HARRIS: Wouldn't it be likely that the body would take
13 precedence over an appendix?

14 MS. ROBESON: Well, that's getting into --

15 MS. WARREN: Yeah.

16 MS. ROBESON: -- legal argument, so --

17 MR. HARRIS: Well, I mean, she's offering a lot of
18 opinions about this mater plan. I'm just trying to see if
19 that's her opinion as well.

20 MS. WARREN: You want me to read that --

21 MS. ROBESON: Can you ask, or answer his question?

22 MS. WARREN: I'm sorry. What's your question?

23 MR. HARRIS: Is it your opinion that the appendix
24 to the master plan takes precedence over the body of a
25 master plan?

1 MS. WARREN: In this case, yes.

2 MR. HARRIS: In your memorandum, at page 7, in the
3 first full paragraph, you say that your search revealed no
4 evidence of Council records that anyone on the Council or
5 its staff was aware that Ms. Arthur's representation that
6 the master plan contained a dual recommendation was, by
7 then, only in Appendix D. But you didn't find any evidence
8 that they weren't aware of that.

9 MS. WARREN: That's like trying to prove a
10 negative. I mean, it's impossible.

11 MR. HARRIS: Fine. And then you say that there's
12 no mention of the discrepancy in the June 20 staff memo
13 transmitting to the Council a resolution. I think you mean
14 July 20. Your Exhibit 17.

15 MS. WARREN: Yeah.

16 MR. HARRIS: Okay. And then you go on to say
17 that, "The evidence shows that the Council approved the
18 master plan with the understanding that it was approving a
19 dual setting for the Riggs-Thompson House." There is no
20 evidence of that, that's your opinion?

21 MS. WARREN: I only have evidence to support that.
22 I don't have any evidence against it.

23 MR. HARRIS: Where's your evidence to support what
24 they're understanding was?

25 MS. WARREN: Ms. Arthur's memo on what was

1 contained in the master plan.

2 MR. HARRIS: So you're assuming they read Ms.
3 Arthur's memo but didn't read the master plan, and
4 therefore, had Ms. Arthur's misunderstanding?

5 MS. WARREN: All I have to go on is what she sent
6 me in the e-mail, which is further confirmation of that.
7 She looked through everything she could find on the
8 property. I found nothing else except what you already
9 have. This historic designation was done as a part of the
10 master plan for North and South Silver Spring. So in
11 reality, the Council did not spend a lot of time on the
12 historic designations. I went through the final resolution.
13 There's no mention at all about the historic designation. I
14 have discussed this with other staff people, and the best
15 conclusion we have is that we have to accept what the
16 Council approved as its intention, that the smaller
17 environmental setting applied only if the Chelsea School got
18 the special exception.

19 MR. HARRIS: That's Ms. Arthur's interpretation,
20 but she's not a Council member, is she?

21 MS. WARREN: And other staff people.

22 MR. HARRIS: We don't know who they are, but
23 there's, that, she's not saying that that's the Council's
24 intention. She's assuming what the Council believed,
25 correct?

1 MS. WARREN: Ms. Arthur is a legislative analyst.
2 It's her responsibility to interpret the legal implications
3 of what the Council does.

4 MR. HARRIS: I don't believe that's the case.

5 MS. ROBESON: Well, you can --

6 MR. HARRIS: Is that -- okay.

7 MS. WARREN: We --

8 MS. ROBESON: -- say that in closing argument.

9 MR. HARRIS: Okay.

10 MS. WARREN: Yeah.

11 MR. HARRIS: Isn't it the Council that decides
12 what their intentions are, not Ms. Arthur?

13 MS. WARREN: That's -- MR. HARRIS: What's
14 that?

15 MS. WARREN: That's an impossible --

16 MS. ROBESON: Mr. Harris, if you --

17 MS. WARREN: Yeah.

18 MS. ROBESON: -- want to get through this today
19 -- I get your point.

20 MR. HARRIS: Okay. I --

21 MS. ROBESON: We don't have a jury here.

22 MR. HARRIS: I understand, but it's very important
23 because --

24 MS. ROBESON: I know. But I'm just --

25 MR. HARRIS: Okay. Fine.

1 MS. ROBESON: I'm just pointing out to you --

2 MR. HARRIS: I will --

3 MS. ROBESON: -- it's 11:30.

4 MR. HARRIS: I understand. I will abbreviate.

5 Let's --

6 MS. ROBESON: Well, if you need to ask them, you
7 need to ask them, but use your time wisely. Sometimes --

8 MR. HARRIS: Final question on the historic
9 setting. Irrespective of any of the -- well, there is
10 nothing in the record that you've found, nothing in your
11 documents that says that if the special exception were
12 approved and Chelsea buys the land, 12 years later, they
13 agree to sell it, that the setting becomes 1.4 acres.
14 There's no evidence that the Council considered that
15 scenario.

16 MR. HARRIS: That's been asked and answered.

17 MS. ROBESON: Yes, I think --

18 MR. HARRIS: Okay.

19 MS. ROBESON: -- it has been --

20 MR. HARRIS: Well, that was with respect to the
21 Planning Board. It was the same question but it was with
22 respect to the Planning Board. I want to know whether, you
23 know --

24 MS. ROBESON: Okay.

25 MR. HARRIS: -- if there is any evidence --

1 MS. ROBESON: All right.

2 MR. HARRIS: -- with the Council.

3 MS. WARREN: I didn't interview anyone on the
4 Council. All I have to go on is what --

5 MS. ROBESON: That's fine.

6 MR. HARRIS: Fine.

7 MS. ROBESON: I understand.

8 MR. HARRIS: That's fine. A few questions on the
9 protection of the historic property. You talked about that
10 and your apprehension about the 1.5, 1.4, 1.3 acre area,
11 whatever it is, the green space around the historic house,
12 being protected by a covenant or some other mechanism versus
13 the historic setting. Do you remember that testimony?

14 MS. WARREN: Yes, I do.

15 MR. HARRIS: Okay. And I think your testimony was
16 that you only trusted the historic -- my words -- that you
17 only trusted the Historic Preservation Commission to protect
18 it, that you didn't have confidence that there was another
19 mechanism to protect any of that area. Is that the essence
20 of --

21 MS. WARREN: That's not what I said.

22 MR. HARRIS: Okay. What --

23 MS. WARREN: I said the Historic Preservation
24 Commission added an additional layer of protection.

25 MR. HARRIS: Additional to what?

1 MS. WARREN: You -- okay, let's -- your testimony
2 was that you were going to offer all sorts of protections
3 based on the HOA covenants, and you were going to have, you
4 know, easements put on it that would prohibit any building
5 on any of this land ever.

6 MR. HARRIS: Correct.

7 MS. WARREN: And I was saying, if that's the case,
8 why not add the additional layer of the Historic
9 Preservation Commission.

10 MR. HARRIS: Now, you are aware that the
11 environmental setting can only be changed through a master
12 plan amendment?

13 MS. WARREN: No, that's not true. There's
14 actually language right now which I believe the Council
15 adopted which allows for the reversion back to the original
16 parcel.

17 MR. HARRIS: No, forget the original parcel, this
18 green area here. The only way that that could become part
19 of an environmental setting would be for a master plan
20 amendment.

21 MS. WARREN: Well then, change that and then go
22 back to the original 1.4. Then you --

23 MR. HARRIS: Well, that's, there was no --

24 MS. WARREN: That way, you don't have to --

25 MR. HARRIS: -- again, no original. Wait --

1 MS. WARREN: We don't have to do anything.

2 MR. HARRIS: For this plan though, for this plan,
3 you were saying that this was inadequate because the
4 Historic Preservation Commission wouldn't be controlling
5 that.

6 MS. WARREN: For that, first of all, I didn't
7 agree that that was better than the original 1.4.

8 MR. HARRIS: You --

9 MS. WARREN: That's number one.

10 MR. HARRIS: You don't believe it's better?

11 MS. WARREN: No.

12 MR. HARRIS: I think you testified to that.

13 MS. WARREN: No, I didn't testify that it was
14 better.

15 MR. HARRIS: Okay.

16 MS. WARREN: I specifically did not say that.

17 MR. HARRIS: Okay. I have no further questions.

18 MS. WARREN: And I think, based on the fact that
19 it requires no further action, it's infinitely better.

20 MS. ROBESON: All right. Mr. Brown?

21 MR. BROWN: I'll try to be very brief.

22 MS. ROBESON: No. I'm just pointing out to Mr.
23 Harris, it is an important issue. On the other hand, I've
24 heard that his client is in a rush, so I'm pointing out that
25 cross-examination, so I don't want to abbreviate anyone

1 else's testimony either, so we will go as long as we need to
2 go.

3 MR. BROWN: Ms. Warren, I want to focus on the
4 point in time when, I believe you testified that Nancy
5 Sturgeon made a change in the body of the master plan
6 language. When did that happen?

7 MS. WARREN: Are you referring to after the March
8 25 --

9 MR. BROWN: Yes.

10 MS. WARREN: -- 1999 worksession?

11 MR. BROWN: Yes.

12 MS. WARREN: And staff was directed to put what
13 the Planning Board voted on into language. And Clare
14 Cavicchi did that in April 27th, and she sent it to Nancy
15 Sturgeon, and Nancy changed the words.

16 MR. BROWN: No, I'm not referring to the --

17 MS. WARREN: You're not referring to that?

18 MR. BROWN: I'm not referring to the appendix.
19 I'm referring to the change in the body of the master plan.

20 MS. WARREN: I'm not sure which time you're
21 referring. Are you referring to in between the preliminary
22 draft and the final draft? Yes.

23 MR. BROWN: I believe you testified that the
24 Planning Board was unaware of a change --

25 MS. WARREN: Yes.

1 MR. BROWN: -- in the body --

2 MS. WARREN: Yes.

3 MR. BROWN: -- of the master plan.

4 MS. WARREN: Yes. That was prior to October 28th,
5 1999.

6 MR. BROWN: When, as best you've been able to
7 pinpoint it, was that change in the body of the master plan
8 language done?

9 MS. WARREN: It came in between the preliminary
10 draft and the final draft. And based on the records of the
11 established language being used throughout the spring,
12 throughout the summer, my best recollection is, it came, of
13 the documents, it came between October 1st, 1999 and October 28th,
14 1999.

15 MR. BROWN: Based upon your research, were you
16 able to find any documentation that the Planning Board
17 itself authorized that change?

18 MS. WARREN: No, I was not.

19 MR. BROWN: Based upon your research, were you
20 able to find any evidence that that change was brought to
21 the attention of the Planning Board at a Planning Board
22 public meeting?

23 MS. WARREN: No, I was not.

24 MR. BROWN: Based on your research of material
25 that you could find in the Council legislative files, did

1 you find anything to, that would support the notion that the
2 Council was aware that there was a change in the draft of
3 the body of the master plan between October, during October of
4 1999?

5 MS. WARREN: No, I was not.

6 MR. BROWN: Now, I want to refer you to the
7 Council resolution, 17-286, the remand resolution in this
8 case. Have you seen that document?

9 MS. WARREN: Yes, I have.

10 MR. BROWN: I want to read to you briefly from
11 that resolution, at page 13. This was the Council's opinion
12 as expressed in their resolution concerning this issue.
13 This isn't everything, but I just want to read the pertinent
14 point. "The evidence in this case, to date, supports the
15 arguments of those opposing the application that the master
16 plan intended the environmental setting to be 1.4 acres in
17 the event the Chelsea School abandoned its use of the
18 property, in the opinion of the hearing examiner." I gather
19 that you've been looking at this question in greater detail.
20 Do you have any reason to doubt the accuracy of that finding
21 by the Council in their resolution?

22 MS. WARREN: No. All of the evidence I've
23 uncovered since then supports that finding.

24 MR. BROWN: The next sentence reads as follows.
25 "The body of the master plan states that it," quote,

1 'summarizes,' unquote, "the basis of its recommendations and
2 specifically refers to the more detailed analysis in the
3 appendix." And I would like you to read aloud, if you
4 would, the first paragraph at the top of page 28, of the
5 final adopted, Council adopted master plan.

6 MS. WARREN: "This section summarizes the historic
7 nature of existing designated resources and provides a brief
8 overview of sites to be considered for designation. These
9 resources are shown in map 13. Detailed evaluations of each
10 site prepared for consideration by the HPC, the Planning
11 Board, and County Council are available in the appendix."

12 MR. BROWN: What is your understanding of the
13 significance of the detailed evaluations in the appendix in
14 relation to that language in the body of the master plan?

15 MS. WARREN: The detailed evaluation of the Riggs-
16 Thompson House in the appendix more clearly reflects the
17 intent of the Planning Board, and it provides additional
18 information about what would happen if the special exception
19 for the Chelsea School was denied.

20 MR. BROWN: Just the intention of the Planning
21 Board, or also the intention of the Council?

22 MS. WARREN: Well, the Council voted on it and
23 accepted it, so it would be Council as well.

24 MR. BROWN: I have nothing further.

25 MS. ROBESON: Thank you. Thank you, Ms. Warren.

1 MR. HARRIS: Irrespective of what change --

2 MS. ROBESON: Wait. Why are you --

3 MR. HARRIS: Oh.

4 MS. ROBESON: She had direct --

5 MR. HARRIS: Okay. Never mind.

6 MS. ROBESON: -- you had cross.

7 MR. HARRIS: Okay. Fine.

8 MS. ROBESON: I know this is a matter --

9 MR. HARRIS: You're right. You're right.

10 MS. ROBESON: -- dear to your soul.

11 MR. HARRIS: You're right. You're right.

12 MS. ROBESON: Mr. Brown, your next witness, or the
13 next witness?

14 MR. BROWN: I think we have Judy Christensen. Ms.
15 Robeson, if I may have a second to warm up the projector.

16 MS. CHRISTENSEN: These are just copies of the
17 slides that I'm showing. After the --

18 MS. ROBESON: Are these already in --

19 MS. CHRISTENSEN: This is in --

20 MS. ROBESON: These are already in the record,
21 right?

22 MS. CHRISTENSEN: This is in the record as the --

23 MS. ROBESON: Okay.

24 MS. CHRISTENSEN: -- form. I printed these out on
25 a better quality of paper because you can't see the black

1 and white blocks in the --

2 MS. ROBESON: Okay. Why don't you, you tell Mr.
3 Harris that, and if, what is this that you're handing me?

4 MS. CHRISTENSEN: This is just my, summary of the
5 slides that I'm going to present here, excerpts from these
6 two documents.

7 MS. ROBESON: But that's, this is already in the
8 record --

9 MS. CHRISTENSEN: Yes.

10 MS. ROBESON: -- as well. Okay. Why don't you
11 tell him what these are, or tell the audience what these
12 are.

13 MS. CHRISTENSEN: I am going to talk on the
14 inventory of this property that was done by the Park and
15 Planning. I have several pictures that are included in the
16 documents. It's quite lengthy. This is what was submitted
17 to the record. This is the actual inventory form. It does
18 include these pictures.

19 MS. ROBESON: So you're introducing these glossies
20 because they're clearer.

21 MS. CHRISTENSEN: You can actually see where they
22 are.

23 MS. ROBESON: Mr. Harris, do you have an
24 objection? These are duplicates of --

25 MS. CHRISTENSEN: These are taken directly from

1 the MHT form as it was submitted to the record --

2 MS. ROBESON: Okay.

3 MS. CHRISTENSEN: -- in a PDF format.

4 MS. ROBESON: Now, were you here, everyone that's
5 going to testify today, was everyone here when I swore
6 everyone in?

7 MS. CHRISTENSEN: Yes, I was here.

8 MS. ROBESON: Okay. Just checking.

9 MR. HARRIS: I do have one question, Ms. Robeson.
10 Ms. Christensen testified at the first hearing quite
11 extensively about the history of this property, etcetera,
12 and why it was designated. That's not really at issue, I
13 don't think, here today, not on the remand. I don't see
14 anything in these exhibits as to, you know, the issue that
15 is before us.

16 MS. ROBESON: Mr. Brown, do you want to address
17 that?

18 MR. BROWN: I'm assuming that Ms. Christensen is
19 just going to give us a little background information to
20 bring us back up to speed on this, and then focus on the
21 question that was of particular interest to you about the
22 process that's used in designating an environmental setting.

23 MS. ROBESON: I think there was, my recollection
24 of the transcript is, okay, I do agree with Mr. Harris that
25 the background of the designation was probably something

1 that should have been raised before. I think it was
2 addressed actually, maybe not as --

3 MS. CHRISTENSEN: Uh-huh, detailed.

4 MS. ROBESON: -- clearly as, in detail as this. I
5 do think though that what we did not have in the last
6 transcript was a in-depth description of the process for
7 designation. So if you could address the process and not
8 the general history of the house, I think that would be
9 helpful.

10 MR. HARRIS: In addition, these are documentary
11 evidence here that she's submitting. Our Power Point, we
12 submitted in advance of the hearing, which was my
13 understanding of what the --

14 MS. ROBESON: I thought this was in the record.

15 MS. CHRISTENSEN: I didn't do them --

16 MR. HARRIS: No.

17 MS. CHRISTENSEN: -- I did not submit the slides
18 themselves, I submitted the document itself --

19 MS. ROBESON: Oh, okay. Well then, I --

20 MS. CHRISTENSEN: -- which contains these
21 pictures, which I have --

22 MS. ROBESON: Okay. Then I'm going to ask you if
23 you can, I'm not going to --

24 MS. CHRISTENSEN: Right.

25 MS. ROBESON: -- permit the slide show then. When

1 I saw this, I thought these were the exhibits. But if you
2 could stick to the exhibits that were submitted in advance.

3 MS. CHRISTENSEN: Do you actually have a copy of
4 this in?

5 MR. HARRIS: Yes, I have, I don't have it with me,
6 but I have seen --

7 MS. ROBESON: It's my recollection that that's in
8 the record.

9 MR. HARRIS: Yes.

10 MS. CHRISTENSEN: This is in the record, yes, I
11 put it in the record.

12 MS. ROBESON: Yes.

13 MR. HARRIS: Yes.

14 MS. ROBESON: So what I'm asking you to do is, I
15 don't know what's going to be on your slide show, but that,
16 those, I'm trying to be fair to both sides.

17 MS. CHRISTENSEN: Sure.

18 MS. ROBESON: This wasn't submitted into the
19 record in advance, so I'm going to ask you to testify what
20 you were going to say about the process, but not introduce
21 the slide show.

22 MS. CHRISTENSEN: Well, yes, you're in charge, but
23 basically, the only reason I did, took the slides out to
24 project was that so everyone would be able to see what I was
25 talking about.

1 MS. ROBESON: You know what? I know that, but I
2 don't know what's in your slide, is everything in this slide
3 show included in that packet that's in the record? Let me
4 do it this way.

5 MS. CHRISTENSEN: Yes. There are two documents
6 reflected in this slide show. First is M: 38-8, which is
7 the MHT form. That is Exhibit 314N.

8 MS. ROBESON: Yes.

9 MS. CHRISTENSEN: And the first pictures and maps
10 and so forth are taken directly from that document. I just
11 simply copied them and put them into a Power Point so
12 that --

13 MS. ROBESON: So there's nothing in the slide
14 show --

15 MS. CHRISTENSEN: That is not in this --

16 MR. HARRIS: Ms. Robeson, I --

17 MS. ROBESON: -- that is not in the --

18 MR. HARRIS: I've now had a chance to look through
19 the submitted exhibit --

20 MS. ROBESON: Right. It --

21 MR. HARRIS: -- and I don't have a --

22 MS. ROBESON: That was part the in-advance
23 requirement --

24 MS. CHRISTENSEN: Uh-huh.

25 MS. ROBESON: -- so if there's nothing in here.

1 Out of an abundance of caution, I'm going to mark this as a
2 new exhibit, which would be --

3 MS. CHRISTENSEN: Okay.

4 MS. ROBESON: -- 3,3 --

5 MS. CHRISTENSEN: Well, let me tell you there is
6 also some photographs from S-2405, which is the special
7 exception. That is 314J.

8 MS. ROBESON: It's in our record as --

9 MS. CHRISTENSEN: It's in your, our records,
10 right.

11 MS. ROBESON: -- 314J. All right.

12 MS. CHRISTENSEN: Okay.

13 MS. ROBESON: So this'll be 338.

14 MS. WARREN: I think that's already admitted when
15 Mr. --

16 MR. HARRIS: Oh.

17 MS. ROBESON: No, no, we didn't admit that.

18 MS. WARREN: Oh, that's right, you took it out.

19 Sorry.

20 MS. ROBESON: So this is a --

21 MR. HARRIS: Yes.

22 MS. ROBESON: -- slide show?

23 MS. CHRISTENSEN: This is basically pertinent
24 slides I'm going to be referring to during my presentation
25 that are contained in historic survey number M: 36-8, and

1 the S-2405 special exception.

2 MS. ROBESON: Okay. You can go ahead.

3 (Exhibit No. 338 was

4 marked for identification.)

5 MS. CHRISTENSEN: Okay. Montgomery Preservation
6 Inc. -- well, first of all, I'm Judy Christensen. I'm the
7 Executor Director of Montgomery Preservation Inc. I am, by
8 profession, a planning, a preservation planner.

9 Montgomery Preservation Inc., during the course of
10 this particular application, has focused its testimony on
11 protection of the historic resource and the environmental
12 setting. Together, they are intended to recreate a sense of
13 a different time. MPI does concur with the testimony and
14 conclusions of Ms. Warren, and requests that the originally
15 recommended 1.4 acre environmental setting for those other
16 than the Chelsea School be restored since the conditions of
17 the Chelsea School special exception cannot be fulfilled in
18 the proposed townhouse plan.

19 At the time of designation, it was noted that the
20 environmental setting of 1.4 acres would be reduced to .85
21 acres only upon the condition that special exception for
22 Chelsea School was approved by the Board of Appeals. In the
23 even that the Chelsea School plan was not approved, the
24 designated environmental setting is to become the entire 1.4
25 acre parcel on which the house is located.

1 Now, I think that we have previously stipulated in
2 the record that the historic site consists of a resource and
3 environmental setting. I don't need to go back over that,
4 do I?

5 MS. ROBESON: No.

6 MS. CHRISTENSEN: No. Okay.

7 MS. ROBESON: I don't know if we've stipulated it,
8 but I know it's been testified to, so --

9 MS. CHRISTENSEN: It's been said many times, yes,
10 yes.

11 MS. ROBESON: -- it's incorporated.

12 MS. CHRISTENSEN: Yes. I am going to do a couple
13 of quick summaries. If you'll go to the very first slide,
14 other than that one. Can you do the whole --

15 UNIDENTIFIED SPEAKER: Slide show.

16 MS. CHRISTENSEN: Can you do the slide show
17 presentation for --

18 UNIDENTIFIED SPEAKER: Sorry.

19 MS. CHRISTENSEN: I don't know how to do that on
20 2010. Anyway, the, form M: 36-8, which is the Maryland
21 historical trust inventory form, this does not have a legal
22 bearing. This is an actual inventory which is submitted to
23 the State of Maryland.

24 Okay. Go to the next one, please.

25 The Riggs-Thompson House is a pre-civil war frame

1 house built by George Washington Riggs. It was expanded in
2 1866 by William Thompson. This first --

3 MR. HARRIS: Objection. I think --

4 MS. ROBESON: Yes. This is in the record, so --

5 MS. CHRISTENSEN: Okay. I'm just going to, I'm
6 just showing you the pictures of it. All right. I want you
7 to look at this picture and notice that up in the top there,
8 it says, "George Riggs."

9 MS. ROBESON: Yes.

10 MS. CHRISTENSEN: And that is by Colesville Road.
11 And his house is out in the country. And that shows the
12 ownership of George Riggs and the rough position of where
13 that property was located. The up and down road in the
14 center is actually Georgia Avenue.

15 Okay. Could we go to the next one.

16 This was identified as a country estate in a park-
17 like setting, architecturally sophisticate as a rare example
18 of Silver Spring estate architecture. This one picture
19 shows the William H. Thompson map, which was in 1865, I
20 believe, and shows that he has his property in basically the
21 same location with Colesville Road going on the, to the left
22 of it, and Georgia Avenue at the bottom.

23 Okay. Can you go to the next one? This won't
24 take very long.

25 This is actually the topo that was submitted as

1 part of the Maryland historical trust inventory plan,
2 showing the siting of this property on the topo map. And
3 you notice that there is a dotted line drawn from Georgia
4 Avenue that goes up to the top of this rather remarkable
5 hill and promontory, which, upon which this particular
6 estate was located, this house was located.

7 Okay. Go to the next one.

8 This is an aerial photograph that was done by the
9 National Photo Company, by Jack Hewitt. Unfortunately, it's
10 not very clear because I took it directly from the exhibit,
11 but the space at kind of in the center of the picture, if
12 you go from Georgia Avenue, from the bottom right corner,
13 diagonally up, you come to an open space, which is white.
14 That is actually the property, the Riggs-Thompson House
15 property as it existed in 1924 and 1925. This property was
16 noted in many of the places characterized as a choice land
17 embellished by an elegant residence attractively located in
18 the center of the place containing fine forests, beautiful
19 drives and lawns. And it mentions that the Riggs-Thompson
20 -- this is taken directly from the document -- became a
21 social center under the Thompsons. They're childless, they
22 did a lot of entertaining, and basically did stuff.

23 The other thing, point that was made in the
24 Maryland Historical Trust document was that this was one of
25 the few properties that was not looted and/or burned or

1 destroyed by the confederate army when they took Silver
2 Spring, unlike the Riggs property. In this case, Mr. Riggs
3 lost only his hay, his animal feed, the food that they had
4 put up for the family, and an ox. So --

5 MS. ROBESON: Okay.

6 MS. CHRISTENSEN: Okay. All right.

7 MS. ROBESON: We need to focus on the --

8 MS. CHRISTENSEN: Okay.

9 MS. ROBESON: -- process of designation.

10 MS. CHRISTENSEN: Okay. The process of
11 designation, which is really not what I was going to talk
12 about, but there is a process of designation. It is the
13 same, both within, generally the same, both within the
14 county and in the municipalities in Montgomery County. They
15 fall under different codes in the Maryland Code.

16 24A is the one for Montgomery County, which
17 assigns historic properties, once they are designated, to a
18 master plan for historic preservation, or a chapter, quite
19 often, in that particular master plan. Like the South
20 Silver Spring, there would be a section of that plan on
21 historic preservation. The responsibility of identifying
22 these sites and proposing them, doing the research, and
23 interacting with the staff, is the Historic Preservation
24 Office staff's responsibility.

25 In this case, this MHT form was originally done by

1 Katherine Crawford, I think, was originally done much
2 earlier and expanded by Clare Cavicchi, who written
3 statement the staffer that carried this particular
4 application forward. And so she expanded upon the basic
5 facts that were in there before.

6 Once there is a submitted Maryland Historical
7 Trust form, there is a staff report put together which
8 details the evidence before the, that the HPC should
9 consider, which is the state of the property, the way it is,
10 conforms or is in compliance with the particular criteria
11 that are outlined in the code, things that would not be in
12 compliance if there are any, and there is a general public
13 hearing. The staff does also provide a recommendation at
14 that point as to whether or not the property is eligible
15 under the criteria and what the environmental setting should
16 be.

17 In this case, Ms. Cavicchi, according to -- I
18 suppose you need the, okay -- Ms. Cavicchi did testify on
19 June 24th, 1998, and the entitled matter before the Historic
20 Preservation Commission. And --

21 MS. ROBESON: Now, did --

22 MS. CHRISTENSEN: And this is 324A.

23 MS. ROBESON: But okay, so is the first step after
24 this form is submitted --

25 MS. CHRISTENSEN: After --

1 MS. ROBESON: -- the first step is to go to the
2 local Historic Preservation Commission?

3 MS. CHRISTENSEN: Yes. And the role of the
4 Historic Preservation Commission and the staff is to
5 identify sites for the rest of the legislative bodies that
6 are significant to the county that possess the
7 characteristics and the elements that would make it
8 eligible --

9 MS. ROBESON: The criteria for --

10 MS. CHRISTENSEN: Right. And to usually state a
11 significance. How is this property significant, and under
12 which criteria does it fall. They also usually allows the
13 setting of an environmental area. Because as we have heard
14 many times before in this, a historic site is not just a
15 building, it is a building and a historic setting which
16 consists of a certain amount of land and other attributes.

17 So given that, this property went to this hearing.
18 I'm going to quote a little bit from this hearing, if you
19 don't mind. And Mr. Harris, this is Exhibit 324A. It's
20 basically a few pages taken out of the HPC hearing on this.

21 MR. HARRIS: I guess I've got to give some leeway
22 here, but I mean, I really think we're off target here.

23 MS. ROBESON: Well, we didn't have testimony, we
24 had testimony on the history. I don't think we had
25 testimony specifically on how it came to be --

1 MS. CHRISTENSEN: The setting.

2 MS. ROBESON: -- designated, so --

3 MS. CHRISTENSEN: That's right. I am responding
4 to your comment the other day as the configuration of the
5 setting, how did that come about.

6 MS. ROBESON: Okay.

7 MS. CHRISTENSEN: All right. On page 79, 80, and
8 so forth of this particular. the recording of this
9 particular hearing, the transcript, there is some
10 conversation -- and this is the only time that I could find
11 any conversation at all about the siting of this property
12 and the actual why it might have been 1.4 acres -- they
13 mentioned that the front of the property -- and this is the
14 only place in the whole record that I could find -- the
15 front of the property originally was up there on this hill
16 facing Georgia Avenue, so that it was sited to be a
17 significant feature of people traveling on the road, was to
18 advertise their wealth, their prosperity, their ability to
19 build a fine country estate, etcetera, as is typically found
20 with this kind of structure.

21 There was a, proceeded to be quite a conversation
22 over the environmental setting. It was brought up at this
23 hearing that the Chelsea School had requested a smaller
24 designated environmental setting. The discussion was
25 whether or not they should do such a thing to provide one or

1 the other, or both.

2 There were people that thought that it should be
3 the larger setting, because that was customary. The
4 property was on 1.4 acres of land that was the house lot
5 that went with the house. That was the property in the tax
6 records that went with this particular residence.

7 There were other people that said, "Well, you
8 know, we could do that, and they can always come back."

9 There were other folks that said, "Well, can't we
10 do both." Sandra Youla, who said, "For the record, I'm the
11 zoning analyst for Silver Spring, I'll be the staff who'll
12 be reviewing the special exception. I'd just like to
13 request tonight that whatever you decide about the Riggs-
14 Thompson House and especially the environmental setting, be
15 very precise and very specific because it will have a great
16 impact on the special exceptions."

17 And in the end, they voted the language to do
18 either/or. If the Chelsea School was approved, a special
19 exception, it would be the reduced acreage -- I don't know
20 what to call it -- square footage. If not, the 1.4 would
21 apply. Now, why would they do that?

22 If you go to the next picture, this is the way
23 this house looked at this period of time, 1924-25. What you
24 see is the front yard, which is actually the western
25 portion, or the -- I'm sorry -- the southern and western

1 portions. This house was a fairly elegant house surrounded
2 by trees, driveways, lawns, gardens, and it was a working
3 farm, and this is all contained in the historic inventory.
4 The 1.4 acres came about through the original subdivision by
5 the owners when they sold it to the Evanswood Association.

6 Can you go to the next picture?

7 And this is what it looked like. And this
8 particular map, this shows -- and this is, I think, a '63
9 Sanborn map -- it's, I've skewed these pictures a little bit
10 so you can kind of keep track of where Pershing Drive is to
11 the right of the property -- you will notice that the,
12 essentially, even though it does not have the house lots on
13 this, it has the subdivision lots and it has the school,
14 because at that point, the Holy Names school was --

15 MS. ROBESON: What's the date of this?

16 MS. CHRISTENSEN: I believe it's '63. Isn't that
17 down at the bottom?

18 UNIDENTIFIED SPEAKER: It does say 1963.

19 MS. CHRISTENSEN: And there are other Sanborn
20 maps, but I did not get them entered into the exhibit.

21 And this is actually where the 1.4 acres comes
22 from. Even though the church of the school was actually
23 building on areas that was not the 1.4 acres, they owned all
24 the rest of the property as well. This shows the original
25 subdivision as far as Evanswood was concerned. So that's

1 where the 1.4 came from.

2 MS. ROBESON: Wait. I'm confused.

3 MS. CHRISTENSEN: Okay.

4 MS. ROBESON: What shows, on this map, the Sanborn
5 map --

6 MS. CHRISTENSEN: Uh-huh.

7 MS. ROBESON: I see the school there.

8 MS. CHRISTENSEN: Yes.

9 MS. ROBESON: And how did they come out with the
10 1.4?

11 MS. CHRISTENSEN: Well, we have seen -- I don't
12 have the actual plat -- there were two parcels, Parcel A
13 and --

14 MS. ROBESON: Oh, so they just picked --

15 MS. CHRISTENSEN: -- Parcel 73.

16 MS. ROBESON: So they just picked Parcel 73.

17 MS. CHRISTENSEN: Parcel 73 was established before
18 this, the school of the, whatever it was, the Holy Names,
19 actually purchased the property. That was what the owners
20 retained for their house, and they actually lived in this
21 house until about 1931, when they lost it to foreclosure.
22 Times were tough. So they had mortgaged this property
23 rather heavily, and were busy doing subdivisions in Silver
24 Spring, and were unable to make their mortgage payments, and
25 then they lost the house.

1 The school eventually took over this property and
2 established its school there, and they did not need a
3 special exception as a --

4 MS. ROBESON: Right.

5 MS. CHRISTENSEN: -- religious institution. So
6 you have a bunch of strange, and perhaps not usual,
7 situations happening all at once at this point. At this
8 point, they didn't care whether they crossed the property
9 line because it was their property. The, and I'm not sure
10 that they did actually, because the, it looks like the, if
11 you look at the bottom, the Cedar Avenue houses, it's one,
12 two, three, four, five, and then there is the end of the
13 lots that were subdivided on Sylvian Place, so that would
14 have gone up and it would go over and make a little jog to
15 Pershing. And that's the origin of your 1.4. It was
16 actually the lot that went with that house as a residential
17 property.

18 Okay. So can we go on to the next picture?

19 And this is basically from the special exception
20 S-2405 application, and it is the existing conditions on
21 this property, and very much like the conditions shown on
22 the 1963 Sanborn map, with the exception that there was a
23 driveway, which started at the lower part of Ellsworth that
24 ran across the property and had trees on both sides. You
25 can see the trees illustrated by circles that actually went

1 up to a, an older garage that was to the left of the house.

2 And if you, can you follow that?

3 MS. ROBESON: To the east, yes.

4 MS. CHRISTENSEN: To the east? Yeah.

5 MR. HARRIS: No, left would be west.

6 MS. CHRISTENSEN: No, to the west. To the west.

7 MS. ROBESON: Oh, you're starting at the other
8 end, okay.

9 MR. HARRIS: Yes, yes, yes.

10 MS. CHRISTENSEN: You start at the bottom at
11 Ellsworth, and you follow that --

12 MS. ROBESON: Yes.

13 MS. CHRISTENSEN: -- little driveway, that's up
14 there, so that was also included within this particular
15 house lot. And it did not go up to the corner of
16 Springvale. That was -- I don't know if you can even see
17 that on there, but it is --

18 MS. ROBESON: No, I can see that.

19 MS. CHRISTENSEN: Okay. And so that was, in fact,
20 the house lot that the owners of that particular property
21 had selected to be a setting for this particular house,
22 which had been greatly expanded to a certain extent as well.

23 If you go to the next one, yes, it's just more or
24 less of a -- what did I put that in there for -- it's a more
25 schematic rendering of that, but it does show the 1.4 acre

1 lot. I think that's why I stuck it in there. You see where
2 the driveway comes up through the property, and there is a
3 line going up to the top and then over. So basically, what
4 they were including in the property, and what was built
5 actually by the school, on the 1.4 acre, was the actual
6 original house, the additions that were done in 1866, and
7 some 20th Century additions on the back, and that was it.
8 The rest of that, the rest of the school buildings were not
9 on the 1.4 acre.

10 Okay. Go to the next one.

11 Now, this, I really have to apologize for, because
12 it's not a very visible picture. But this is the proposed
13 site plan that was conditioned on the Board of Appeals,
14 this, for this special exception. And in many ways, it
15 doesn't really differ too much, except it's got a crescent-
16 shaped parking lot over on Ellsworth, which is not on the
17 1.4 acres at all, and the house itself has a square area
18 outlined by the buildings that they are proposing.

19 I don't know if you can show that, Michael, but it
20 is a square area coming up on the side that those -- you
21 want me to go show? I think I better.

22 UNIDENTIFIED SPEAKER: I think we should.

23 MS. ROBESON: Is it toward Pershing?

24 MS. CHRISTENSEN: No.

25 MS. ROBESON: Oh.

1 MS. CHRISTENSEN: All right. Let's see. I can
2 show, here's the house.

3 MS. ROBESON: Yes.

4 MS. CHRISTENSEN: Here is an area which is
5 outlined much better in the document.

6 MS. ROBESON: Okay. So can you describe that area
7 you're --

8 MS. CHRISTENSEN: This is called the green.

9 MS. ROBESON: Is it labeled on the plan?

10 MS. CHRISTENSEN: It was when I looked at it, but
11 I don't see very, I can read you the part where it talks
12 about it, but I can't, I don't particularly see it.

13 MS. ROBESON: Okay. Well, for the record, it is a
14 rectangular area to the left of the house that is in the
15 central portion of the property surrounded by the school
16 building.

17 MS. CHRISTENSEN: That's correct.

18 MS. ROBESON: All right.

19 MS. CHRISTENSEN: So this up here, here is the
20 property, this is what they proposed to do this, they were
21 going take down some parts of this building, which they
22 didn't think was contributing, and then they were going to
23 build what amounted to an academic quad with a center green.
24 It's a very typical and very common academic style of
25 campus.

1 And if you would -- well, let me see, I think I
2 have it handy here -- if you would look on page 9 of -- I
3 guess this -- 314G, that's this --

4 MR. HARRIS: That, thank you.

5 MS. CHRISTENSEN: -- that document --

6 MR. HARRIS: Thank you.

7 MS. CHRISTENSEN: -- and it's at page 9, in the
8 back. It doesn't have a circle so I'm not sure if that's
9 the original page or -- it talks about additional
10 architectural and landscape components. "The existing
11 structures, together with the proposed new facilities, are
12 oriented to the proposed Chelsea green common open space
13 area which is linked to the main lower parking area with a
14 pedestrian terrace and East-West Highway. The proposed
15 linkage is amassing are" -- I'm going to sum up this --
16 "further define a more campus-like environment and provide
17 accessible outdoor" something "that does not presently exist
18 at the facility. The landscape plan" something "on the
19 existing vegetation green consists of large mature trees,"
20 and so forth.

21 So when this was actually approved by the Board,
22 and it was conditioned --

23 MS. ROBESON: The Planning Board?

24 MS. CHRISTENSEN: No, the Board of Appeals.

25 MS. ROBESON: Oh, Board, oh, the special

1 exception, I'm sorry, okay.

2 MS. CHRISTENSEN: Uh-huh, special exception. This
3 green area was to remain open. That was one of the
4 conditions. It was shown on the site plan. They were
5 supposed to be faithful and in compliance with the site plan
6 to have their special exception approved and enforced.

7 So as far as we have the same kind of situation
8 that we're seeing now, we're seeing that a, another entity
9 other than the HPC asked to come forward and said, "We will
10 do this, in fact, even though it is not in legal paper. We
11 are going to be responsible for maintaining this particular
12 space as open space and, but it's not going to be part of
13 the historic preservation.

14 MS. ROBESON: Okay.

15 MS. CHRISTENSEN: Okay. And everyone accepted
16 that, and it went forward.

17 Now, we can look at this and realize that very
18 little of this was done. There is no quad, there is no
19 other buildings, there is no restoration, there is no
20 crescent. None of this was actually complied with during
21 their A&I (phonetic sp.), so -- when you come to what is
22 being proposed by the Chelsea School -- that's, what do I,
23 do I have another slide there? I don't even know if I do.
24 No? Oh, take that away. I'm sorry. That was not supposed
25 to be in there. Okay. That concludes all my pictures.

1 MS. ROBESON: I don't know what was -- okay, go
2 ahead.

3 MS. CHRISTENSEN: Okay.

4 MS. ROBESON: Keep going.

5 MS. CHRISTENSEN: So --

6 MS. ROBESON: I didn't see anything too bad about
7 it, but --

8 MS. CHRISTENSEN: Well, what, point is that the
9 intent of this whole proceeding, as far as the environmental
10 setting, was to preserve this particular historic site.
11 This particular historic site had some special elements to
12 it, some special conditions to it, and it had some essential
13 components about it that the historic environmental setting
14 was supposed to keep. And therefore, the HPC said 1.4, the
15 staff recommendation to the Planning Board said 1.4, and
16 then that went forward until the request to lower and the
17 proffer to replace that oversight with the oversight of the
18 school itself, which was approved. But the language was
19 also, always very careful to state that it was only for this
20 particular use, and it was tied very tightly to the special
21 exception which demanded all of these conditions be met.

22 MS. ROBESON: Well, let me ask you the same thing.
23 Do we have that exhibit comparing the old and the new?

24 MR. HARRIS: It's right here. The --

25 MS. ROBESON: Mr. --

1 MR. HARRIS: -- the acetate overlay?

2 MS. ROBESON: -- Thakkar? No.

3 MR. HARRIS: Oh.

4 MR. THAKKAR: The one that I testified to?

5 MS. ROBESON: The one that has the old site plan
6 on the top --

7 MR. HARRIS: Oh, oh.

8 MS. ROBESON: -- and the new, I mean, schematic
9 development plan on the top, and the -- I'm going to ask you
10 the same --

11 MR. THAKKAR: This one?

12 MS. ROBESON: Yes, thank you. And that is exhibit
13 something -- I'm having trouble with the record here, I
14 think we substituted it -- but it's the exhibit that has the
15 initial schematic RT-15 --

16 MS. CHRISTENSEN: Uh-huh.

17 MS. ROBESON: -- development plan with the revised
18 one. The revised on, I guess my question is, is it
19 primarily the concern about ownership that -- I think you
20 were here for testimony --

21 MS. CHRISTENSEN: I was.

22 MS. ROBESON: -- that this was, that house in a --
23 I forget Mr. Iraola's words -- but it would be located
24 prominently.

25 MS. CHRISTENSEN: Yes.

1 MS. ROBESON: Is it the ownership that makes you,
2 what do you feel is inadequate about that lower drawing, the
3 environmental setting in the lower drawing?

4 MS. CHRISTENSEN: Okay. It is close to the
5 original setting in a different configuration. If this was
6 to be the environmental setting, and it would be dedicated
7 with the HPC having total oversight over it, I think maybe I
8 could live with that.

9 MS. ROBESON: Yes.

10 MS. CHRISTENSEN: The thing that bothers me very
11 much --

12 MS. ROBESON: Yes.

13 MS. CHRISTENSEN: -- with this, having the 37,000
14 and the other being an HOA is, you have two conflicting
15 goals and points of view here. You have a townhouse
16 development, of which people are paying condo fees or
17 homeowner association fees to maintain common property,
18 including this so-called public park.

19 MS. ROBESON: Yes.

20 MS. CHRISTENSEN: They would like, probably, after
21 EYA is long gone from this, and their homeowners association
22 now has the delegated authority to make decisions about this
23 property and how their money is spent --

24 MS. ROBESON: Yes.

25 MS. CHRISTENSEN: -- they have the ability to come

1 in and say, "Wait a minute, we are paying for this, we want
2 to have tot lots, we want to have bicycle racks, we want to
3 have sandboxes, we want to have playgrounds." These are not
4 structures, these are temporary. And part of the
5 landscaping thing with historic preservation is, customary
6 uses that are not structural, or alterations to the
7 landscape, like grading, are usually allowed by right. So
8 you can put, as a homeowner, you can put up your
9 clothesline, you can put all this stuff, you know, just like
10 in some areas, you cannot because of the homeowners
11 association. So this could possibly happen there.

12 The HOA does not have the same criteria, or the
13 same understanding, or the same experience as the Historic
14 Preservation Commission, nor the guidance of the Historic
15 Preservation staff, as to what is appropriate. And if it is
16 appropriate and something that is needed, how to put it on
17 this property so that it does not detract from the historic
18 house and the atmosphere that you're trying to create.

19 Furthermore, we don't know what the size of this
20 property that would go with this historic house would be, as
21 far as legal ownership. It could be 9,000, it could be
22 12,000, could be 16,000. Probably not 1.4. You would have
23 like a 3 or \$4 million house sitting by a townhouse
24 development. You would have to find a very committed civil
25 war buff, which I hope is out there, Mr. Harris, I really

1 do.

2 MR. HARRIS: I don't have the, I'm a buff, but not
3 \$3 million buff.

4 MS. CHRISTENSEN: If I come across one, I'll let
5 you know. Or quite often, in situations like this,
6 institutional uses come in that are low-use, institutional
7 come in and get a special exception like the school did for
8 a low parking ratio and a low, you know, just use of it,
9 because they have a defined membership base, money base,
10 goals, and something to support it.

11 What you're going to end up here with, or one
12 possible thing, I should say, is a very small line drawn
13 around this building. And this owner is going to want to
14 have a fence, probably, if he's in the middle of a public
15 park. So you have to think about all these things that this
16 owner is going to want to preserve the privacy and the
17 enjoyment of his own property. And those are very natural
18 things. I think you expect that.

19 The HPC and the staff are there to try to make
20 those things possible without detracting and taking away the
21 historic value of the house, but --

22 MS. ROBESON: Now, what is the lot that's
23 ultimately drawn -- and I don't know the development
24 standards in the RT off the top of my head, but --

25 MS. CHRISTENSEN: I don't either.

1 MS. ROBESON: -- what if the lot that's developed,
2 ultimately drawn around this single family home is entirely
3 within the historic preservation, is entirely within the
4 environmental setting?

5 MS. CHRISTENSEN: That's good.

6 MS. ROBESON: Okay. But does that affect your
7 opinion or not?

8 MS. CHRISTENSEN: It doesn't affect my opinion
9 because you have all the rest of it, and under the HOA, plus
10 you're going to have a homeowner that wants to make this
11 property identified as his property or her property, or
12 whoever's property, and they're going to want fences,
13 they're going to want a shed -- there is no garage left.
14 It's a, the house will be reduced somewhat because they're
15 going to take off all of the older non-historic portions of
16 it. Where is this family going to keep their outdoor toys,
17 their bicycles, their lawn mowers, everything? You have to
18 think about these things.

19 Generally, you would come into an HPC, and you'd
20 say, "I need storage, I need someplace to store all this
21 stuff. What would be a good kind of thing? Could it look
22 like a stable? Could it look like a carriage house? Could
23 it look like whatever? What would be appropriate to put by
24 this house that would work?" They would be going through
25 that.

1 MS. ROBESON: Yes. Yes.

2 MS. CHRISTENSEN: And that is basically what
3 they're there for. The thing that bothers me is that there
4 would be a substantial amount of this property that would be
5 under the HOA's administration. They do not have that
6 training, experience, ability, and they are, have a totally
7 different constituency, the people that live there and pay
8 to maintain this property in the common areas. So that is
9 one of my great things. How do you make a civil war estate
10 when you have a small piece with a fence around it,
11 surrounded by a public park?

12 MS. ROBESON: Yes.

13 MS. CHRISTENSEN: I think there are probably ways
14 to deal with that. In some places, where we've had
15 competing interests that I have been involved with -- and I
16 work for the City of Rockville as a preservation planner --
17 we actually did a master plan for the site which all of the
18 people --

19 MS. ROBESON: For this site?

20 MS. CHRISTENSEN: Not this site, no, it's not in
21 Rockville.

22 MS. ROBESON: Oh, a, oh, okay. I was --

23 MS. CHRISTENSEN: I'm talking about --

24 MS. ROBESON: -- a similar site.

25 MS. CHRISTENSEN: Yes.

1 MS. ROBESON: Yes.

2 MS. CHRISTENSEN: A hypothetical site, where you
3 have a group of people or a group of citizens and a
4 government, all of whom have an interest in the property and
5 a use, but their uses are not exactly the same. In that
6 case, generally, you try to do a master plan for the site in
7 which everyone agrees that the property will look like this,
8 this will be grass, this will be this, this will be that,
9 and a procedure for altering it. That could be one way to
10 do it.

11 And the property that I'm thinking of at the
12 moment -- I don't know if Mr. Harris -- you know, the
13 Glenview Mansion, which was just --

14 MR. HARRIS: Yes.

15 MS. CHRISTENSEN: -- put on the National Register
16 level -- that was a big problem there because you had
17 hikers, bikers, ball players, theater people, everybody in
18 the world, all of whom were completely concerned about the
19 use, their use of that property, and whether or not somebody
20 else's use would supersede their use and control of what
21 they wanted to do. In the end, the only way that was
22 settled was by doing a master plan for that property.

23 MS. ROBESON: Yes.

24 MS. CHRISTENSEN: Everybody agreed to it, whether
25 they liked it or not, in the end, they agreed to it, and

1 that was the process. That is something that could perhaps
2 be done here.

3 MS. ROBESON: Yes.

4 MS. CHRISTENSEN: The idea of just having a "do
5 not build" thing on it, to me, strikes me as a little bit,
6 it doesn't really preserve the historic setting and the
7 sense of a civil war site --

8 MS. ROBESON: Yes.

9 MS. CHRISTENSEN: -- because you're going to have
10 various things going on around your house, which is the
11 focal point of your historic site, that may not have
12 anything to do with the civil war. It just won't. It
13 would, and I think there are probably ways to screen, and
14 probably ways to fix that. I can't really, I'm not going to
15 go out on a limb and say how to do it, because we'd have to
16 look at the plans and go through a process.

17 MS. ROBESON: Yes.

18 MS. CHRISTENSEN: But that is really my problem.
19 It's not so much the ownership; it is the common goals are
20 different from these two people, or the two owners, the
21 owner of the house and the owner of the public park and the
22 common area.

23 MS. ROBESON: Yes. Okay.

24 MS. CHRISTENSEN: Okay?

25 MS. ROBESON: That was helpful. Mr. Brown,

1 do you have any questions?

2 MR. BROWN: Just one or two quickly. Ms.
3 Christensen, you heard Ms. Warren's testimony about this
4 particular configuration of approximately 1.4 acres versus a
5 configuration that would take it a little further out to the
6 west and maybe --

7 MS. CHRISTENSEN: Uh-huh.

8 MR. BROWN: -- down a little bit from Springvale.
9 Do you remember her testimony?

10 MS. CHRISTENSEN: Yes, I do.

11 MR. BROWN: I want to ask you the same question.
12 Do you, I believe you testified that if all of this area
13 that's shown on the EYA proposal were preserved as the
14 historic setting, "I could live with that," I think that was
15 your phrase.

16 MS. CHRISTENSEN: I think that would, I think you
17 could make it work. And that was heard a lot when we talked
18 about access to the site, and so forth. People would say,
19 "Well, it is possible to do that, but it's perhaps not the
20 best way to do it." And that's my --

21 MR. BROWN: Okay. So --

22 MS. CHRISTENSEN: -- my sense here.

23 MR. BROWN: So I want to focus on Ms. Warren's
24 view that this isn't the best way to do it, it would be
25 better to preserve more land here on the southern side of

1 the property if you had 1.4 acres. Are you in agreement
2 with her on that, or do you have a different point of view
3 on that?

4 MS. CHRISTENSEN: I think, to go back to, to go to
5 the original recommendation of 1.4 acres without, in this
6 townhouse configuration, would be the simplest, the easiest,
7 and the most definable way to do it; otherwise, you are
8 going to have to do, as Mr. Harris mentioned, go to the
9 County Council and ask for an amendment to this particular
10 property.

11 MR. BROWN: I'm just talking about, I'd like you
12 to answer the question --

13 MS. CHRISTENSEN: Yes or no.

14 MR. BROWN: -- from a, no, from a, from the point
15 of view of historic preservation values, not just the
16 problem of process. But just long-term, is this house
17 better preserved with more land out this way to the west, or
18 more land up to the north?

19 MS. CHRISTENSEN: Well, I think I would rather see
20 it out to the west, but you could set it right down in the
21 middle of that block of townhouses, I believe, is that where
22 it goes? Did I, yeah. I think I would rather do it that
23 way myself because it gives more frontage view. It also
24 gives more of a yard to the property. And it is the
25 original lot that went with the house, selected by the

1 owners of that house, who used it as a residential property.

2 MR. BROWN: I have nothing further.

3 MS. ROBESON: Okay. Mr. Harris.

4 MR. HARRIS: Okay. Ms. Christensen, you have my
5 wheels turning, and I want to get to some of your later
6 things here, but first, I have some preliminary questions.
7 I think you'll agree with me that the setting, the civil, or
8 I'm sorry, the civil war parcel was 140 acres, I think you
9 were referring to that, so to the --

10 MS. CHRISTENSEN: At one time, it was 160, but --

11 MR. HARRIS: Oh.

12 MS. CHRISTENSEN: -- yes, it was always a generous
13 piece, it was a farm.

14 MR. HARRIS: Okay. So that whatever we're
15 preserving today, we're not preserving, you know, what it
16 looked like during the civil war period.

17 MS. CHRISTENSEN: No, we're not.

18 MR. HARRIS: Downtown Silver Spring occupies the
19 front yard.

20 MS. CHRISTENSEN: Right.

21 MR. HARRIS: So a small change there. When the
22 Sisters of the Holy Names bought it, the -- well, let me
23 back up. The parcel 73, piece 73 was a residue after the
24 subdivision in 1932, I think you were saying that.

25 MS. CHRISTENSEN: It --

1 MR. HARRIS: It subdivided the rest of the
2 property, but not --

3 MS. CHRISTENSEN: Uh-huh.

4 MR. HARRIS: -- the 1.4?

5 MS. CHRISTENSEN: That remained in the Jordan's
6 possession, I believe.

7 MR. HARRIS: Okay. And --

8 MS. CHRISTENSEN: Yeah.

9 MR. HARRIS: And then they sold off the rest of it
10 to a developer?

11 MS. CHRISTENSEN: It was sold for development,
12 Sylvian Place.

13 MR. HARRIS: Okay. But then, some years later,
14 just a few years later actually, Holy Names bought the whole
15 property and the whole block, basically, other than the --

16 MS. CHRISTENSEN: Uh-huh.

17 MR. HARRIS: -- Cedar Street houses, correct?

18 MS. CHRISTENSEN: That's correct.

19 MR. HARRIS: So the effect of that 1.4 acre line,
20 which prior to that was an ownership line, disappeared
21 because the ownership was unified.

22 MS. CHRISTENSEN: But they didn't re-plat it.

23 MR. HARRIS: It wasn't platted as --

24 MS. CHRISTENSEN: No.

25 MR. HARRIS: -- as a -- well, they did re-plat it.

1 MS. CHRISTENSEN: Eventually, yes, but not --

2 MR. HARRIS: Eventually, yes.

3 MS. CHRISTENSEN: -- but not then.

4 MR. HARRIS: Right. But not then.

5 MS. CHRISTENSEN: Right.

6 MR. HARRIS: But they owned the whole thing, so --

7 MS. CHRISTENSEN: They owned the whole thing and
8 they used it as if it were a platted whole parcel.

9 MR. HARRIS: Correct. And I'm aware that it is
10 customary to, for an historic setting, to be the parcel on
11 which a piece of ground is located, but there are any number
12 of cases where the setting is something different, aren't
13 there?

14 MS. CHRISTENSEN: There are because sometimes it
15 would be an entire farm.

16 MR. HARRIS: Exactly. And when this was up for
17 proposed designation, they considered the 1.4 acre parcel,
18 but everybody, really, I think, the HPC, their staff, the
19 Planning staff, the Planning Board, and the Council, all
20 were okay with reducing it to 37,000 square feet, at least
21 based on the Chelsea School's proposal.

22 MS. CHRISTENSEN: They were in agreement that if
23 the Chelsea School, through their special exception, their
24 compliance with all the conditions in the special exceptions
25 in their site plan, maintained that property as open space,

1 as if rather than having the HPC, that they would accept
2 that.

3 MR. HARRIS: Well, wait a minute. The special
4 exception wasn't approved until 2000, and the proposed
5 designation of the site was occurring in '98 and '99. They
6 didn't know what the Board of Appeals was going to approve
7 at that time.

8 MS. CHRISTENSEN: Well, they didn't even know
9 what, basically, they did not have a legal opinion until in
10 October of 2000, I think October in 2000. That was after they had
11 published their final plan.

12 MR. HARRIS: Correct. So --

13 MS. CHRISTENSEN: So at that point, it was not
14 even legal to assume that the Chelsea School had received
15 their permission.

16 MR. HARRIS: That's correct. So when the Planning
17 Board, let's take them as an example, were proposing that
18 the 37,000 square foot setting would be appropriate, at
19 least if the Chelsea School obtained special exception, but
20 they didn't know what that approval might ultimately entail.

21 MS. CHRISTENSEN: I'm sorry. I'm not following
22 that.

23 MR. HARRIS: Okay. The Planning Board draft was
24 in --

25 MS. CHRISTENSEN: The --

1 MS. ROBESON: The 1999 --

2 MR. HARRIS: Yes.

3 MS. CHRISTENSEN: Was in, through 1999 --

4 MR. HARRIS: December 1999.

5 MS. CHRISTENSEN: -- July, October, and October 27.

6 MR. HARRIS: So in December of 1999, when the
7 Planning Board proposed to the Council the 37,000 square
8 foot setting, they did not know whether the Chelsea School
9 special exception would be approved, number one --

10 MS. CHRISTENSEN: That's correct. It was still in
11 process.

12 MR. HARRIS: And if they didn't know whether it
13 was going to be approved, they certainly didn't know what
14 would be approved.

15 MS. CHRISTENSEN: Yes. MR. HARRIS: Okay.
16 But they were comfortable, nonetheless, not using the 1.4
17 acre parcel, but using a 37,000 square foot, because Chelsea
18 was saying, "Look, we can't live with that." They were
19 sympathetic to Chelsea's cause, in other words.

20 MS. CHRISTENSEN: They were sympathetic to
21 Chelsea, but they were using both.

22 MR. HARRIS: At the same time, the Sisters of the
23 Holy Names were opposing any designation, correct?

24 MS. CHRISTENSEN: I don't know what the Sisters of
25 the Holy Names were doing.

1 MR. HARRIS: Okay.

2 MS. CHRISTENSEN: I know there was some problems
3 with the --

4 MR. HARRIS: Okay. I think the record indicates
5 that they were opposing it, but if you don't know, that's
6 fine.

7 MS. CHRISTENSEN: I don't know.

8 MR. HARRIS: Okay. Let's take a hypothetical --
9 well, back up. The designation of a 37,000 square foot
10 setting, at least if the Chelsea special exception's
11 granted, did not leave the HPC with any control over the
12 area beyond the 37,000 square foot --

13 MS. CHRISTENSEN: That's true.

14 MR. HARRIS: -- so that, in fact, Chelsea was
15 proposing to put buildings right next to it.

16 MS. CHRISTENSEN: No. They were putting a green
17 next to it.

18 MR. HARRIS: This is Exhibit 192 in the record,
19 it's the Chelsea School plan. Isn't this a building here,
20 this kind of L-shaped?

21 MS. CHRISTENSEN: Yes, but it's not even connected
22 to the historic house.

23 MR. HARRIS: I didn't say the house, the setting.

24 MS. CHRISTENSEN: Okay.

25 MR. HARRIS: The environmental, the 37,000 square

1 foot environmental setting does that. In fact, it was
2 specifically drawn to wrap around that building, wasn't it?

3 MS. CHRISTENSEN: Yes.

4 MR. HARRIS: So the building --

5 MS. CHRISTENSEN: I assume, let's say.

6 MR. HARRIS: Right.

7 MS. CHRISTENSEN: I don't know for sure.

8 MR. HARRIS: So the building hogs the 37,000
9 square foot line, right up against the historic setting.

10 MS. CHRISTENSEN: Uh-huh.

11 MR. HARRIS: Okay. And the Historic Preservation
12 Commission didn't object to that at all.

13 MS. CHRISTENSEN: I don't think, I think the
14 record shows the Historic Preservation objected throughout
15 the whole hearing, but they did not have enough information
16 to make any kind of a judgment.

17 MR. HARRIS: Okay. Well, in any respect, the
18 Council, or the Board of Appeals approved this, and the
19 Council approved the setting, knowing that this was what was
20 going to be built.

21 MS. CHRISTENSEN: That was proposed, and that was
22 what was in the special exception. That was what the
23 Chelsea School was going to be held to producing, to comply
24 with their special exception.

25 MR. HARRIS: Okay. And so everybody knew there

1 was going to be a building next, right next to the historic
2 setting?

3 MS. CHRISTENSEN: Everybody knew that there was a
4 hope on the Chelsea School, yes, that there would be, plus
5 the green space, plus a better plan, plus parking, and all
6 that, yes, that's right.

7 MR. HARRIS: And in fact, in the interim, there
8 were buildings that directly connected to the Riggs-Thompson
9 House, and that were --

10 MS. CHRISTENSEN: That's true, uh-huh.

11 MR. HARRIS: -- that were in a historic setting?

12 MS. CHRISTENSEN: That's true.

13 MR. HARRIS: And again, they weren't concerned
14 that those buildings precluded the property from being an
15 important historic resource.

16 MS. CHRISTENSEN: No, because they were not really
17 attached to the buildings, they had walkways.

18 MR. HARRIS: Okay. But they were --

19 MS. CHRISTENSEN: But they were not the original
20 -- well, you run into a problem is, what is historic and
21 what isn't. Probably, 1858 is historic, probably 1866 is
22 historic, 1924 maybe. You get in a problem with like that
23 as well.

24 MR. HARRIS: Right. Well, I agree with you, but
25 my point is that there were buildings, basically, in the

1 back yard of this house.

2 MS. CHRISTENSEN: Yes.

3 MR. HARRIS: And they were still comfortable
4 designating it as an historic resource that would be worth
5 keeping.

6 MS. CHRISTENSEN: Well, this plan shows those
7 buildings removed.

8 MR. HARRIS: Well, but that, they're still there
9 today, or some of them are, aren't they?

10 MS. CHRISTENSEN: That's right. They did not
11 comply with the conditions of their special exception.

12 MR. HARRIS: And so they haven't eliminated, they
13 haven't taken it off the master plan plan for historic
14 preservation because of those buildings. That's my point.
15 The fact that there are buildings there today, and the fact
16 that Chelsea was going to build a different building right
17 next to the line, don't prevent this from being a resource
18 that should stay on the master plan.

19 MS. CHRISTENSEN: No, because those buildings are
20 removable, and you, EYA has proposed removing them as well.
21 And I hope that you do a much better job than Chelsea
22 School, frankly. So no, those would not, those are things
23 that you can take away. Anything that's removable without
24 damaging the original structure, and you can restore the
25 original structure, which has aluminum siding over brick,

1 probably because someone wanted to merge all these --

2 MR. HARRIS: Yes.

3 MS. CHRISTENSEN: -- many things into it, and it
4 looks like a collection of trailer houses, but anybody, you
5 can do that. To make it better, remove the things, as long
6 as you can remove them without damaging the original fabric,
7 then you're fine.

8 MR. HARRIS: And is it your understanding that EYA
9 does intend to remove those non-original things to restore
10 it to its historic --

11 MS. CHRISTENSEN: That is what I understood from
12 your testimony, yeah.

13 MR. HARRIS: In addition to this plan, this
14 Exhibit 192, that's what the Board of Appeals approved,
15 there's nothing in the master plan that precluded, or would
16 have precluded, Chelsea from coming in five years, 10 years,
17 15 years later, and proposing a building in the quad there,
18 would there?

19 MS. CHRISTENSEN: Well, they would lose their
20 special exception.

21 MR. HARRIS: No, they'd have to amend it, wouldn't
22 they?

23 MS. CHRISTENSEN: They would have to go through a
24 process with the special exception, the Board of Appeals,
25 and probably some other, I don't know how many.

1 MR. HARRIS: But the HPC wouldn't be involved in
2 that because it would be items that are outside of the
3 historic setting.

4 MS. CHRISTENSEN: That's a legal question that I
5 really can't answer, frankly.

6 MR. HARRIS: Okay. The --

7 MS. CHRISTENSEN: If they have already pledged
8 that that will remain open, and that is their conditions of
9 occupying the site of the special exception use, I think
10 some other legal mind is going to have to decide whether
11 that would be possible.

12 MR. HARRIS: Okay. So you're not sure whether the
13 HPC has jurisdiction beyond an historic setting?

14 MS. CHRISTENSEN: It does not have jurisdiction;
15 it quite often has comments and opinions.

16 MR. HARRIS: Okay. We all -- okay. So fine. So
17 the Chelsea School also was proposing a major access road to
18 their property through the front yard of the Riggs-Thompson
19 House, weren't they?

20 MS. CHRISTENSEN: They were proposing an access
21 road, but you could also say it was behind the Cedar Avenue
22 houses, as well as in the front yard. It's quite a distance
23 from the front of the house.

24 MR. HARRIS: Quite a distance. Okay. Maybe 100
25 feet or something?

1 MS. CHRISTENSEN: I don't know. I don't have a
2 scale with me, and I can't see.

3 MR. HARRIS: Well, the exhibit will speak for
4 itself. Exhibit 192 shows a road there. That's the same
5 road we're talking about, I think, right?

6 MS. CHRISTENSEN: What road? The --

7 MR. HARRIS: This was in your, the show as well,
8 but that's the Chelsea School special exception --

9 MS. CHRISTENSEN: Yes, yes.

10 MR. HARRIS: -- plan --

11 MS. CHRISTENSEN: Right.

12 MR. HARRIS: -- that was approved.

13 MS. CHRISTENSEN: Uh-huh.

14 MR. HARRIS: And that's showing a road through the
15 front yard of the house.

16 MS. CHRISTENSEN: It shows a driveway, and that
17 was another bone of contention that people argued that they
18 did not have enough, did not have enough information about
19 this proposed driveway to make a, to render a decision and
20 to approve something at that meeting of the HPC. That, they
21 called that a driveway; they did not call it a --

22 MR. HARRIS: Okay. We'll call it a driveway.

23 MS. CHRISTENSEN: Okay.

24 MR. HARRIS: Okay. What Chelsea was looking for
25 at that time, they wanted specific language in the master

1 plan that would have affirmatively said, "We can do this
2 driveway."

3 MS. CHRISTENSEN: They did want that, yes.

4 MR. HARRIS: But the Board of Appeals, or the
5 Historic Preservation Commission, the Planning Board didn't
6 put in affirmative language, but neither did, does anything
7 in the plan preclude that driveway.

8 MS. CHRISTENSEN: It would have to come up -- no,
9 here is nothing. But --

10 MR. HARRIS: They'd have to get HPC --

11 MS. CHRISTENSEN: -- it would have to come through
12 an HPC work permit and go through the whole process, so
13 there was a protection. If the neighbors protested, if the
14 HPC felt that this was inappropriate, I'm sure that there
15 would have been more discussion about that.

16 MR. HARRIS: And in the end, the Chelsea School
17 special exception that was approved does contain approval
18 for that driveway.

19 MS. CHRISTENSEN: Does it?

20 MR. HARRIS: This is it.

21 MS. CHRISTENSEN: There is a, something shown
22 there, but there is no approval. I mean, as far as the
23 special exception, yes, but they cannot approve in behalf of
24 the HPC.

25 MR. HARRIS: They would still, they have the Board

1 of Appeals approval, but they would still have to go --

2 MS. CHRISTENSEN: They would have to go to the
3 HPC.

4 MR. HARRIS: -- the HPC for a work permit.

5 MS. CHRISTENSEN: Yes. And that was one of, as I
6 said, that was one of the problems they had with this whole
7 thing, that they were being asked to make decisions on
8 whether there should be a driveway here or something else,
9 and they had no plans, other than a schematic sketch.

10 MR. HARRIS: Correct.

11 MS. CHRISTENSEN: Yeah.

12 MR. HARRIS: Correct. But the point is that
13 the --

14 MS. ROBESON: Is there --

15 MR. HARRIS: -- the special --

16 MS. ROBESON: -- a question?

17 MR. HARRIS: Yes. Did the special exception get
18 approved showing that driveway?

19 MS. CHRISTENSEN: The plan you have in your hand
20 is the one that was submitted, and as far as I know, it was
21 approved.

22 MR. HARRIS: And nothing in the HPC's discussions
23 ruled that out?

24 MS. CHRISTENSEN: They said that they would have
25 to come in for a review and a permit.

1 MR. HARRIS: Okay. You're aware that Scott
2 Whipple, the supervisor for the Historic Preservation
3 Commission staff, has sent a memo to the Planning Board that
4 he is supportive of the Chelsea School -- or I'm sorry --
5 the EYA proposal here?

6 MS. CHRISTENSEN: Which proposal?

7 MR. HARRIS: The one that's on the table now.

8 MS. ROBESON: The lower one --

9 MR. HARRIS: Oh, I'm sorry.

10 MS. ROBESON: -- on that --

11 MR. HARRIS: Yes, the lower one there.

12 MS. CHRISTENSEN: Do you have a copy of that?

13 MS. ROBESON: -- 12.5.

14 MR. HARRIS: Well, technically, I have a copy of
15 his recommendation for the other one, the top one.

16 MS. ROBESON: No, I think he has one --

17 UNIDENTIFIED SPEAKER: It's the new one.

18 MR. HARRIS: Oh, this is the new one. Okay. No,
19 this is the new one.

20 MS. ROBESON: -- in the staff report --

21 MR. HARRIS: Okay. Yes, it's attached --

22 MS. ROBESON: -- for the --

23 MR. HARRIS: -- to the staff report that is
24 Exhibit -- I lost my exhibit list. I only have two of them.
25 Oh, here it is.

1 MS. ROBESON: Is it 282?

2 MR. HARRIS: Probably --

3 UNIDENTIFIED SPEAKER: Yes, 282.

4 MS. ROBESON: 119, 12 --

5 UNIDENTIFIED SPEAKER: 282.

6 MR. HARRIS: 282, yes, thank you. So in Exhibit
7 282, the staff report contains Mr. Whipple's support memo.

8 MS. CHRISTENSEN: And this is the development
9 review committee?

10 MR. HARRIS: That was his memo there to the
11 Planning Board, to Damon Orobona, who presented it to the
12 Planning Board.

13 MS. CHRISTENSEN: Well, this is basically going
14 over the same kind of arguments we've been arguing for lo
15 these many weeks, basically, or months.

16 MR. HARRIS: Well, whatever, but that, you would
17 agree that he has recommended approval?

18 MS. CHRISTENSEN: I don't see, what I see is,
19 Historic Preservation staff understanding that, "Although an
20 environmental setting may be reduced through subdivision, it
21 is the purview of the County Council, not the Planning
22 Board, to establish, so absent language to the contrary, the
23 environmental setting for the Riggs-Thompson House should
24 remain 37,056 square feet, unless the County Council
25 enlarges the setting by approving an amendment to the master

1 plan for historic preservation." That's basically what I
2 said, that if we would go ahead and put the, do an amendment
3 and put the 1.4, or "XXX" that you have selected, and have
4 it protected by the HPC oversight, I, as I said, I could
5 live with that. Now, that's my opinion; that's not the --

6 MR. HARRIS: Right.

7 MS. CHRISTENSEN: -- opinion of the, may not be
8 the opinion of the SOECA board.

9 MR. HARRIS: And that's not the opinion of Scott
10 Whipple here, he's not saying create a larger --

11 MS. CHRISTENSEN: He's going with the status quo.

12 MR. HARRIS: Right. The 37,000 square foot.

13 MS. CHRISTENSEN: He is going with the status quo
14 because he is a person who is a supervisor of an office and
15 not a policy maker. And at the point, his policy comes from
16 whoever is his higher up, the next immediate head. So
17 unless he had particular and stringent research to show that
18 it should be that, I would expect him to go with what the
19 thing said.

20 MR. HARRIS: With what the master plan says?

21 MS. CHRISTENSEN: That's right.

22 MS. ROBESON: And that says --

23 MS. CHRISTENSEN: 37,000, 05 -- yeah. MR.

24 HARRIS: Yes.

25 MS. CHRISTENSEN: However, we have shown, in great

1 detail here, through Ms. Warren's testimony, that every step
2 of the way, when the -- the preservation of this historic
3 site was discussed. It was said to be 1.4, unless the
4 Chelsea School took over and was responsible for maintaining
5 the green side, the greensward, and the other elements that
6 they were going to do.

7 MR. HARRIS: And now, you're going to get me going
8 again.

9 MS. ROBESON: Okay. Don't --

10 MR. HARRIS: Those are your words?

11 MS. CHRISTENSEN: Those are my words, yes.

12 MS. ROBESON: Okay.

13 MS. CHRISTENSEN: That is my reading --

14 MS. ROBESON: Stop that.

15 MS. CHRISTENSEN: -- of this whole huge pile of
16 stuff.

17 MR. HARRIS: Okay. You don't need HPC approval to
18 put playground equipment in an historic setting, do you?

19 MS. CHRISTENSEN: They probably would like to look
20 at it. There certainly is not HPC approval for putting
21 playground equipment, household playground equipment in a
22 residential property because it's usually not over-built.
23 There is playground equipment that is commercial playground
24 equipment for the use of the general public which has far
25 more stringent standards than the ordinary Toys R Us kind of

1 stuff. Normally, the Toys R Us residential stuff is not a
2 problem.

3 MR. HARRIS: And in fact, to get a historic area
4 work permit, you don't need it for performing any grading,
5 excavating, construction -- or I'm sorry -- you do need it
6 only if --

7 MS. CHRISTENSEN: You do need grading.

8 MR. HARRIS: -- performing any grading,
9 excavating, construction, or substantially modifying or
10 changing the environmental setting, so there's --

11 MS. CHRISTENSEN: That's right.

12 MR. HARRIS: -- a certain leeway in there.

13 MS. CHRISTENSEN: Yes. Gardening, you know,
14 planting perennials, planting shrubs, planting trees, all
15 that is usually not regulated or does not come under a
16 permit, unless you have declared that you are going to
17 restore a historic setting, or recreate a historic garden,
18 which is occasionally done.

19 MR. HARRIS: And you can put up a fence without
20 Historic Preservation permission?

21 MS. CHRISTENSEN: Oh, no. Oh, no. MR.
22 HARRIS: Really?

23 MS. CHRISTENSEN: No.

24 MR. HARRIS: I don't see that here that -- well,
25 what's required. Constructing, reconstructing, moving,

1 relocating, demolishing, or any manner, changing or altering
2 the exterior features of an historic site, or any historic
3 resource located. You're saying that that includes building
4 a fence?

5 MS. CHRISTENSEN: Fences.

6 MR. HARRIS: Okay.

7 MS. CHRISTENSEN: Quite often it includes
8 hardscapes, like walkways and driveways.

9 MR. HARRIS: Okay. But the --

10 MS. CHRISTENSEN: Yeah.

11 MR. HARRIS: -- HPC will look at them and may
12 approve?

13 MS. CHRISTENSEN: They, yes, that's what they're
14 there for.

15 MR. HARRIS: In fact, I think you were saying
16 earlier, they might approve a building, a garage in there if
17 it's done appropriately.

18 MS. CHRISTENSEN: They approve things by
19 compatibility, design, and whether or not it is appropriate
20 to the site in question. MR. HARRIS: If the developer
21 were to agree to a binding element in the zoning, that would
22 give the HPC review power over subsequent changes to this
23 beyond what's shown in the site plan. Was that the kind of
24 thing that you were talking about would, you know, would
25 satisfy your concerns?

1 MS. ROBESON: What's this, Mr. Harris?

2 MR. HARRIS: I'm sorry.

3 MS. ROBESON: The one --

4 MR. HARRIS: Yes, thank you.

5 MS. ROBESON: The open space?

6 MR. HARRIS: The open space around the historic
7 house that's shown on the SDP here has been proposed, and
8 EYA would like to do that because they think it adds to the
9 setting. And what I'm proposing to you is whether agreeing
10 that any other changes to that site would be subject to HPC
11 review. Would that satisfy your concern?

12 MS. CHRISTENSEN: Not just review, no.

13 MR. HARRIS: Well, approval.

14 MS. CHRISTENSEN: If they would, if it would
15 require a work permit issued by the Historic Preservation
16 Commission, it might work.

17 MR. HARRIS: The --

18 MS. CHRISTENSEN: But I have to say that you would
19 have to have some kind of a plan. The process that would
20 work the very best for EYA, and the community, and the
21 potential owners of these properties, is for you to have a
22 plan for this historic setting drawn up, that does the very
23 best you can do to recreate an estate, country estate, with
24 walkways -- all of this could be quite possibly a benefit to
25 the neighborhood and to the estate -- walkways, shrubs,

1 trees, gardens, etcetera. Have that approved, and then have
2 that be in force as your document that regulates it. The
3 HOA, I mean, they have a difficult task to do. People do
4 not like to give their money to the HOA to benefit the
5 general public walking through their park. They want things
6 for themselves. I think that you have to look at that in
7 the long run and say, and make allowances for this; that the
8 HOA is going to have the interests and the desires of their
9 homeowners that pay the money first and foremost. And --

10 MS. ROBESON: Well, let's get back to Mr. Harris's
11 question --

12 MS. CHRISTENSEN: Okay.

13 MS. ROBESON: -- which I think is -- and Mr.
14 Harris, can you please correct me if I'm wrong -- I think
15 what he's saying is that green area, including the public
16 access space, so the entire --

17 MS. CHRISTENSEN: Uh-huh.

18 MS. ROBESON: -- green area, if it were subject to
19 HPC approval for any --

20 MS. CHRISTENSEN: Uh-huh.

21 MS. ROBESON: -- construction under their current
22 existing statute -- right?

23 MS. CHRISTENSEN: So in other words, it would be
24 in a de facto historic setting, environmental setting?

25 MR. HARRIS: That's the kind of thing I'm thinking

1 of. I mean, your, I hadn't thought about this before, but
2 your testimony has gotten me --

3 MS. CHRISTENSEN: Well, if it --

4 MR. HARRIS: -- pondering that.

5 MS. CHRISTENSEN: It's kind of possible, but it's
6 a little scary too, because you see what happened with the
7 Chelsea School, where they wanted the reduced, they wanted
8 the smaller environmental setting so that they could do
9 things, and here, we got a plan in for 76 townhouses. You
10 know, that's the kind of thing -- because you and I do not
11 know what's going to happen in the future here. Chelsea
12 School had no idea. You know, and it doesn't mean our
13 intentions are bad; it just means that, to me, the important
14 thing to look at in this environmental setting is preserving
15 the historic resource and its setting, to make it something
16 that's worth saving, to make it convey that to the people
17 that are using it, going past it, surrounding it. How do
18 you do that? You normally do it through a Historic
19 Preservation Commission. If you could construct some kind
20 of legal thing --

21 MS. ROBESON: But I think that's what he's
22 offering.

23 MS. CHRISTENSEN: That's right, and that's what
24 I'm saying. If you can do that, that might work. And the
25 other thing that might work is just asking the County

1 Council to make the new setting the setting.

2 MR. HARRIS: And the HPC can, as we were talking
3 earlier, approve buildings in there. Conceivably, would you
4 support a covenant that's on the land and runs with the land
5 that prohibits any building -- that's not -- any buildings?
6 That's, you know, then, you've got even stronger control
7 than the HPC control.

8 MS. CHRISTENSEN: Yeah, but you may building
9 yourself into a corner.

10 MR. HARRIS: Well, don't want to do that, no.

11 MS. CHRISTENSEN: You know, you may have this
12 homeowner with, trying to build a garage, and it's outside
13 the historic --

14 MR. HARRIS: Right.

15 MS. CHRISTENSEN: -- area. This is why my gut
16 instinct is just to go back to the 1.4, since it seems quite
17 clear through the whole process, that that was, if it was
18 not to be the school, in the way the Chelsea School was
19 planning to use it, that that would be the best way to
20 handle it.

21 MR. HARRIS: Well, if they were to go to the 1.4
22 acre, wouldn't you assume, this area's not at the north of
23 the 1.4 acre, along Springvale at the corner of Pershing --

24 MS. CHRISTENSEN: Uh-huh.

25 MR. HARRIS: -- it is not within the 1.4 --

1 MS. CHRISTENSEN: Right.

2 MR. HARRIS: -- so they would have the right to
3 build there.

4 MS. CHRISTENSEN: That's right, they would.

5 MR. HARRIS: Yes, so --

6 MS. CHRISTENSEN: Absolutely, yeah, it'd just be a
7 different configuration.

8 MR. HARRIS: Whereas if they were to -- oh,
9 demolition already -- the, if the --

10 MS. ROBESON: And it doesn't need a permit.

11 MR. HARRIS: If they were to do this, that, what's
12 shown on the schematic development plan, that that includes,
13 you know, keeping buildings out of that area, and opening up
14 the whole end of the block for the historic property.

15 MS. CHRISTENSEN: Well, all I, you know, this is
16 only my opinion, but after reading all of this, and going
17 through the materials, the property owners that lived in
18 that house felt the 1.4 was suitable for their residential
19 use. That's what I have, that's what we all have.

20 MR. HARRIS: Okay. That's not to say a different
21 1.4 isn't also appropriate?

22 MS. CHRISTENSEN: My interest, and the reason I'm
23 testifying is, protection of the historic site and the
24 resource, and I think that was basically the whole argument
25 from the start. I can't put it any clearer than that. That

1 was what everyone was concerned about.

2 MR. HARRIS: Okay. I think that's all I have.

3 MS. ROBESON: Okay. Mr. Brown?

4 MR. BROWN: Real quickly. Ms. Christensen, you
5 mentioned that some of your slide show presentation came
6 from Exhibit 314J. Is this 314J? Can you tell me what it
7 is?

8 MS. CHRISTENSEN: 314J is the memorandum dated
9 October 1st, 1999, on the Chelsea School case number S-2405.
10 However, it is more than just the staff memorandum; it has
11 the whole file.

12 MS. ROBESON: What file? The --

13 MS. CHRISTENSEN: Well, it goes through many, it
14 is not just the staff memorandum; it is quite inclusive
15 with --

16 MS. ROBESON: Oh, I see.

17 MS. CHRISTENSEN: -- with plans for restoration of
18 buildings, and --

19 MS. ROBESON: Okay.

20 MR. BROWN: Is this the --

21 MS. CHRISTENSEN: -- facade elements --

22 MS. ROBESON: I see.

23 MS. CHRISTENSEN: -- the whole thing. It's --

24 MR. BROWN: Is this the staff report prepared for
25 the Planning Board hearing on the special exception?

1 MS. CHRISTENSEN: All I can do is read. It says,
2 it is from Ronald E. Passion, Community Base Planning
3 Division; Glenn Kreger, Review Type, Special Exception. It
4 has a staff recommended, recommendation on it, so I assume
5 this is the staff recommendation and summary of materials.

6 MR. BROWN: Yes, and I'd like to --

7 MS. CHRISTENSEN: It also has letters from various
8 neighbors and everything in it.

9 MR. BROWN: And I'd just like to point you to
10 Attached A-3 to the staff report, and ask you whether or not
11 that's the same document that Mr. Harris was showing you on
12 cross-examination, showing the proposed configuration of the
13 green and the buildings --

14 MS. CHRISTENSEN: Yes.

15 MR. BROWN: -- for the special exception.

16 MS. CHRISTENSEN: It appears to be the same.

17 MR. BROWN: All right. I have nothing further.

18 MS. ROBESON: Thank you. All right. We are going
19 to break for lunch until 1:30. Just briefly, how many more
20 witnesses, do you, how many more witnesses do we have?

21 UNIDENTIFIED SPEAKER: Should we stand? MS.

22 ROBESON: From the opposition, yes, please. Okay. So
23 there's six, seven.

24 UNIDENTIFIED SPEAKER: Mr. Doggett.

25 MS. ROBESON: Oh, how can I forget him. Okay. So

1 eight. All right. That's good. Thank you very much.
2 1:30, we'll be back.

3 (Whereupon, at 12:49 p.m., a brief recess was
4 taken.)

5 MS. ROBESON: Okay. Are the parties ready?

6 MR. BROWN: I think we're having technical
7 difficulties.

8 UNIDENTIFIED SPEAKER: No, here we go. Yeah,
9 coming up. Resolved.

10 MS. ROBESON: Okay. We're back on the record.
11 For the parties' information, I can't go beyond 6:30
12 tonight. All right? So let's continue. Mr. Brown, your
13 next witness?

14 MR. BROWN: Tom?

15 MS. ROBESON: Or the next witness? I don't know
16 if you're Mr. Brown's witness.

17 MR. ARMSTRONG: I'm never really quite sure if I'm
18 Mr. Brown's next witness. I'm not his witness. I mean,
19 he's not my witness.

20 MR. BROWN: I've never met the man before.

21 MR. ARMSTRONG: I am Tom Armstrong. I live at 606
22 Greenbrier Drive in Silver Spring, a couple blocks from the
23 Chelsea site. I'm the Secretary of the Seven Oaks Evanswood
24 Civic Association, and I'm a member of the Association's
25 Task Force on the proposed development at the Chelsea site.

1 After the last hearing, you issued a decision,
2 among other things, that, quote, "The SDP should be
3 reconfigured to propose a development with less density and
4 less massing so that it will be more compatible with the
5 character of the transition from the central business
6 district to the residential community north of Cedar Street,
7 and more consistent with the 2000 North and West Silver
8 Spring master plan." EYA has responded with the most
9 minimal retreat possible from their earlier proposal, from
10 RT-15 to RT-12.5. The result is that the massing and the
11 density are still incompatible with the property
12 surroundings.

13 EYA has tried to make the case that the massing is
14 significantly reduced, but the dimensions of the strings of
15 townhouses belie that claim. The lengths of the townhouse
16 strings on the Springvale Road side of their layout are
17 reduced from 132 feet to 120 feet, or 7.6 percent, but their
18 mates, the strings on the side closer to Cedar Street, are
19 increased from 110 feet to 120 feet, or 9.1 percent. So the
20 total length of a string and its mate is now 240 feet or, as
21 opposed to the earlier proposal of 242 feet, which is a
22 reduction of eight-tenths of 1 percent.

23 Meanwhile, the two mews facing Springvale are
24 increased, each of them, from 36 feet to 40 feet wide. But
25 three of the six strings of the two, of townhouses that face

1 Springvale, are also increased from 36 feet wide to 38 feet
2 wide. The other three strings facing Springvale remain at
3 40 feet. So the result is that you are actually increasing
4 the width of townhouse facade that the residents of
5 Springvale will face from a previous total of 234 feet, to a
6 current total, in this proposal, of 240 feet.

7 In the previous SDP, the residents of Springvale
8 would have faced a 390 foot wide development from the end of
9 one string all the way to the end of the other with the mews
10 and the private alleys in between. And of that 390 feet,
11 234 feet of it, or 60 percent, would consist of the
12 townhouse facades. In this SDP, they would face a 404 foot
13 wide development, another 14 feet wider, with 240 feet of
14 facade, another six feet of facade, for 59.4 percent of the
15 total width of the development being occupied by townhouse
16 facades.

17 So what's the result of these changes? If you
18 stand on Springvale Road and look through the property
19 toward Cedar Street, the length of a pair of townhouse
20 strings parallel to your gaze is all of two feet shorter
21 than in the previous SDP; you see mews that are slightly
22 wider, but you also see townhouses that are slightly wider
23 as well. If these small tweaks make for a reduction in
24 massing, that reduction is infinitesimal. I would say that
25 the massing has changed not at all.

1 The change in the density in the new SDP is
2 similarly unresponsive to your earlier decision. It still
3 proposes a dramatic increase in density over the surrounding
4 neighborhood. To put their proposed density in context, EYA
5 feels that it is instructed to look at other townhouse
6 developments near single family detached residential
7 neighborhoods around the county. They point to a number of
8 such developments in Montgomery County in their exhibits.
9 Eight of their claimed comparables are outside the North and
10 West Silver Spring master plan area, so they're not relevant
11 to this discussion, which is concerned with whether their
12 SDP is compatible with this site.

13 But even if we look at the sites outside the North
14 and West Silver Spring master plan area, we see that they
15 demonstrate two things. First, all of their claimed
16 comparables are different from the Chelsea site in that they
17 lie directly on major highways, or directly adjacent to
18 nonresidential properties, or both. While the Chelsea site
19 is accessed only by interior streets, it is surrounded by R-
20 60 zoning, as we've seen previously in Exhibit 151. Second,
21 EYA's proposed density is higher than those of all of the
22 townhouse developments in the North and West Silver Spring
23 master plan area.

24 Before I discuss the townhouse developments that
25 are actually within the relevant master plan area, let's

1 take a look at the out of area comparisons. The table in
2 Exhibit 314E has the details. The Ritchie Avenue townhouses
3 shown -- and this is, I should say that the slides that
4 we're showing are part of which exhibits?

5 MS. ROBESON: 314.

6 MR. ARMSTRONG: No, 314 is one of the tables. 314
7 E and F are, 314 -- hang on -- 314D and E are the tables
8 that I'll be referring to. The figures that are shown on
9 the board, on, or the projector are --

10 UNIDENTIFIED SPEAKER: 314H.

11 MR. ARMSTRONG: 314H.

12 MS. ROBESON: Okay.

13 MR. ARMSTRONG: Okay. So the Ritchie Avenue
14 townhouses, which you see now projected on the screen, those
15 townhouses are directly behind a six-story apartment
16 building on Sligo Avenue. Sligo Avenue is an arterial road.
17 The density there is only 5.5 units per acre.

18 The next one, Belvedere Glen, that one abuts the
19 Forest Glen Metro parking lot to the south, and an apartment
20 complex to the east. The density there is 8.4 per acre.

21 Next, the Glenbrook Village development lies right
22 on Wisconsin Avenue, a major highway. It faces NIH across
23 Wisconsin Avenue and the Naval Medical Center across Jones
24 Bridge Road. Its density is 9.5 per acre.

25 The Rosedale Park development, which we don't have

1 a slide for, but it's in EYA's Exhibit 291F, on page B,
2 Rosedale Park development is less than half a block off of
3 Wisconsin Avenue directly behind a multi-story CBD-1 zoned
4 building. It was recommended for CT zoning in the relevant
5 master plan. Its density is only 10.6 per acre.

6 The Kaz development, again, we don't have a slide
7 for that, but that is in EYA Exhibit 291F. The Kaz
8 development is, or was, on Georgia Avenue, also a major
9 highway, and adjacent to another RT-12.5 development. It
10 had a proposed density of 10.7 units per acre; however, the
11 Council has returned it to R-60 zoning, as is indicated, in
12 fact, on the zoning inset, if you look at their Exhibit
13 291F, for the Kaz development.

14 I'll pause here to remind us of the proposed
15 Chelsea density. If you count the whole 5.25 acres,
16 including the Riggs-Thompson House and its surroundings in
17 the calculation, the density they're proposing with 64
18 units, is 12.2 units per acre. If, however, the 1.4 acre
19 environmental setting, whichever flavor, is removed from the
20 calculation, the density is 16.4 per acre. So effectively,
21 within the area in which the townhouses are built, that will
22 be the density, 16.4 per acre. In between, if you take only
23 .085 acres out, as the setting around the Riggs-Thompson
24 House, you get a density of 14.3 per acre. So the minimum
25 density on this site, with the, calculated in the way most

1 favorable to EYA, is 12.2 per acre. But anyway you look at
2 it, the proposed Chelsea density is higher than all of the
3 existing townhouse developments I have just described.

4 Let's return to the table still in 3 -- what is
5 it --

6 MS. ROBESON: 14.

7 MR. ARMSTRONG: -- 314E. Yes, I couldn't remember
8 if it was E or D.

9 MS. ROBESON: Oh.

10 MR. ARMSTRONG: If you return to 314D, only at
11 this point in the table do we start to get the densities
12 that compare to the Chelsea density, as calculated in this
13 way that's most favorable to them.

14 Bonaire Court, which is on Sligo Avenue, which
15 again, is an arterial road. It is also adjacent to a five-
16 story apartment building property. Its density is 11.9 per
17 acre, still a bit lower.

18 Good Counsel on Georgia Avenue, a major highway,
19 at the corner of Arcola Avenue, has a density of 13.7 per
20 acre. That development shares a lot with commercial
21 developments such as the BB&T building, and is also
22 adjacent, directly adjacent to the Wheaton CBD, on the
23 southern boundary.

24 Winchester Mills is, Winchester Plyers Mill -- I'm
25 sorry -- is also on Georgia Avenue, a major highway. It, at

1 16.0 units per acre, is the highest density claimed
2 comparable that EYA cited in the exhibit that Mr. Iraola was
3 discussing yesterday, on Friday. This site was specifically
4 recommended for RT zoning in the relevant master plan. It
5 faces a church across Plyers Mill Road, and another church
6 across Georgia Avenue. It is surrounded by an RT-12.5
7 development that has a density of 12.3 per acre, and that
8 RT-12.5 development itself abuts the Montgomery College
9 School of Art & Design on the south.

10 However, all of these developments are outside the
11 North and West Silver Spring master plan area. If any
12 comparison with other townhouse developments is to be made,
13 it should be with developments that are within the master
14 plan area. The table in Exhibit 314D has the details for
15 these developments.

16 The first of these is Woodside Way. We don't have
17 a picture for that. And it's not in EYA's materials either
18 because it was not cited by EYA as a comparable. Woodside
19 Way is at 16th Street, a major highway, and Second Avenue,
20 an arterial road. It has 5.9 units per acre.

21 The next one, we also don't have a figure for it
22 ourselves, and it's not in EYA's materials because it was
23 not cited by them. Leighton's Addition Woodside is on
24 Georgia Avenue, a major highway -- not to belabor the point,
25 or to belabor the point, I suppose -- and Grace Church Road.

1 It is had 8.5 units per acre.

2 Woodside Courts, or Courts of Woodside, we do have
3 an aerial photo of that. It's on the screen. Woodside
4 Courts is on Georgia Avenue, at Noyes Drive. It has 9.7
5 units per acre.

6 Fairview Court, in our next picture, is on
7 Fairview Avenue. It's not on a major highway, but it does
8 actually abut a CBD, and it has 8.7 units per acre.

9 National Park Seminary, an EYA project, abuts the
10 Army's Forest Glen Annex to its southwest. It also has a
11 density of 8.7 per acre, if you take all of the condos, the
12 single family houses, and the townhouses into account. It
13 also was not cited by EYA in their list of comparables.

14 Woodside Mews on Third Avenue abuts the MARC
15 tracks. It has 9.8 units per acre. It also was not cited
16 by EYA.

17 Now, finally, we get to some townhouse units that
18 start to approach EYA's proposed density on the site, again,
19 if you grant them the whole 5.25 acres, and all three of
20 these are on Georgia Avenue, which I'll reiterate one last
21 time, is a major highway. The first of these is Woodside
22 Station, that's at Georgia and Spring, at 11.4 units per
23 acre. And I'll call -- if you back up to that for a
24 second -- I'll call your attention to the fact, in terms of
25 massing, that there are the two end blocks and strings of

1 townhouses, but in between, things are more broken up. So
2 it's, doesn't have the same sort of massing as we have in
3 the current SDP for the Chelsea site.

4 The next one is the Woodside townhouses at --
5 there we, you were there a moment ago, no, other way, yeah
6 -- that's the Woodside townhouses at Georgia and Ottawa
7 Place, 11.6 units per acre.

8 And finally, the Locust Grove townhouses, which we
9 don't have an aerial for, that's at Georgia Avenue and
10 Locust Grove Road. It's right at the exit ramp off of the
11 inner loop of the beltway. It abuts the Montgomery Hills
12 commercial area on Georgia. It faces the Calvary Lutheran
13 School across seven lanes of traffic on Georgia Avenue. And
14 its density is 11.8 units per acre. It, too, was not cited
15 by EYA.

16 So what do these nine developments have in common?
17 Six of them are on a major highway. The rest of them abut
18 nonresidential uses. And every one of them is lower density
19 than EYA proposes for the Chelsea property, even giving EYA
20 the benefit of all 5.25 acres in the density calculation.

21 So to summarize, the Chelsea site is interior to
22 the neighborhood. It does not lie on a major highway or on
23 an arterial road. It's accessed by interior streets. It
24 does not abut the CBD. It does not abut commercial uses.
25 Yet, in this SDP, EYA is proposing a higher density than at

1 any townhouse site in the North and West Silver Spring
2 master plan area.

3 The fact that this density is higher, not only
4 than that of the neighborhood surrounding the Chelsea site,
5 but than any other townhouse development in this master plan
6 area, further demonstrates how incompatible this SDP is to
7 the neighborhood. This high density further demonstrates
8 the complete incompatibility with its surroundings.

9 As a final note, or a side note, MPDUs were
10 important to some of the Council members in their
11 deliberations the last time around, even though their
12 presence or absence is irrelevant to the compatibility of
13 the development, with the neighborhood. Given the county's
14 density bonus system, which EYA has not used, six to eight
15 MPDUs could be included under RT-8 zoning, while still
16 keeping the overall density significantly below the level
17 that they're currently proposing.

18 In sum, EYA has missed an opportunity to propose a
19 development that is compatible with its surroundings, either
20 in massing or in density. Instead, they have made tiny
21 changes in the massing of the buildings, and they have
22 proposed a density that is higher than that of any townhouse
23 development in this master plan area. So I urge you to
24 recommend rejection of this plan.

25 MS. ROBESON: Thank you. Mr. Harris?

1 MR. HARRIS: Mr. Armstrong, you appreciate that
2 the dimensions of units are not fixed at the time of the
3 zoning application, that that is determined at the time of
4 site plan?

5 MR. ARMSTRONG: Does that mean they can get
6 bigger?

7 MR. HARRIS: It means they could bigger, it means
8 they could get smaller.

9 MR. ARMSTRONG: So okay.

10 MR. HARRIS: So we don't know what the dimensions
11 will be. Were you aware of that?

12 MR. ARMSTRONG: I'm aware that the SDP is
13 preliminary in some senses.

14 MR. HARRIS: Okay. And it's up to the Planning
15 Board to determine what is appropriate at the time of site
16 planning.

17 MR. ARMSTRONG: That's a question I'm not
18 qualified to answer.

19 MR. HARRIS: Okay. Are you qualified to answer
20 whether a townhouse development outside the North and West
21 Silver Spring is relevant? I think you're saying that that,
22 those outside are not relationship?

23 MR. ARMSTRONG: That's what I said earlier, yes.

24 MR. HARRIS: Wouldn't you agree with me that every
25 one of the townhouse projects you've cited does adjoin

1 single family residential?

2 MR. ARMSTRONG: I believe they do.

3 MR. HARRIS: And so someone has determined that
4 those projects are compatible with the single family
5 development that they adjoin?

6 MR. ARMSTRONG: In those settings, I imagine that
7 is how they got there.

8 MR. HARRIS: You're aware that the Planning Board
9 confirmed, at its hearing in January, that it is appropriate
10 under both the zoning and subdivision ordinances and county
11 policy to count the entire gross tracked area in terms of
12 calculating density?

13 MR. ARMSTRONG: I'm aware that that's what they
14 said.

15 MR. HARRIS: Can I see the calculations you have
16 for the National Park Seminary where you come up with a
17 density of -- where did I see that --

18 MR. ARMSTRONG: I think I can tell you the numbers
19 on which that density calculation is based if you'll give me
20 a moment to pull it out. These numbers, by the way, were
21 taken from the county's website, www.mcmaps.org, where they
22 list numbers of units and tracked areas for all of the sites
23 that I, for which I gave numbers, and in fact, for any
24 number of other sites. Now, so, let's see.

25 MR. HARRIS: Just on the arithmetic, I see that

1 now. You don't have to pull that up. Okay. You mentioned
2 that the density we're proposing of 12.2 acres, I think, is
3 denser than the neighborhood surrounding it, but it's not
4 denser than the Colesville Towers that borders it one side,
5 is it?

6 MR. ARMSTRONG: The Colesville Towers does not
7 border it.

8 MR. HARRIS: Okay. Is it, it's not denser than
9 Colesville Towers?

10 MR. ARMSTRONG: No.

11 MR. HARRIS: Okay. Nor is it denser than the
12 Springvale Nursing Home?

13 MR. ARMSTRONG: I'm not sure how you count the
14 Springvale Nursing Home given the different sort of facility
15 that it is.

16 MR. HARRIS: Okay. And are you aware that the
17 park, although now a park, is known to RT-15?

18 MR. ARMSTRONG: It's not.

19 MR. HARRIS: RT-12.5?

20 MR. ARMSTRONG: That's right. But it's also not
21 adjacent to this property.

22 MR. HARRIS: But it's in the neighborhood?

23 MR. ARMSTRONG: So is the Silver Spring Civic
24 Center.

25 MR. HARRIS: Pardon?

1 MR. ARMSTRONG: It's in the neighborhood. You can
2 see it from there.

3 MR. HARRIS: That's all I have.

4 MS. ROBESON: Mr. Brown, any questions?

5 MR. BROWN: No questions.

6 MS. ROBESON: Okay. Is there anything else you'd
7 like to say?

8 MR. ARMSTRONG: No, I think I've covered it.

9 MS. ROBESON: Thank you. And who --

10 MR. BROWN: Next up is Maria Schmit.

11 MS. ROBESON: Ms. Schmit, you were previously
12 sworn, correct?

13 MS. SCHMIT: Yes, that is correct.

14 MS. ROBESON: Okay. You're still under oath.

15 MS. SCHMIT: Yes.

16 MS. ROBESON: Please state your name and address
17 for the record.

18 MS. SCHMIT: My name is Maria Schmit, and I live
19 at 8607 Springvale Road, which is directly across from the
20 Chelsea site.

21 MS. ROBESON: Okay.

22 MR. BROWN: Ms. Schmit, I understand that you're
23 going to present, as a Power Point presentation, some of the
24 photos that are in Exhibit 314H, is that right?

25 MS. SCHMIT: Yes, that is correct. I would also

1 like to note that these are the photos that are in the
2 exhibit that was given, but the order was changed, so we
3 have a new copy if anyone would prefer it, in the order that
4 we are --

5 MS. ROBESON: Okay.

6 MS. SCHMIT: -- presenting it today --

7 MS. ROBESON: But it's the same --

8 MS. SCHMIT: -- we have that available.

9 MS. ROBESON: -- photos?

10 MS. SCHMIT: It's, yes, they're the same photos.

11 No new photos are introduced. I would like to pick up where
12 Mr. Armstrong's testimony left off, and take a second look
13 at EYA's comparatives of compatibility, which is in the
14 record, at Exhibit 291F, and as testified to by EYA last
15 Friday.

16 MS. ROBESON: Yes.

17 MS. SCHMIT: The photos I'm about to show you are
18 in Exhibit 314H, although I'm showing them in a different
19 order.

20 MS. ROBESON: Okay.

21 MR. HARRIS: Excuse me one second. I'm sorry --

22 MS. SCHMIT: Yes.

23 MR. HARRIS: -- to interrupt you. I'm not, I want
24 to make sure I have the right document because mine aren't
25 numbered. Is this the document that says "photos," then

1 it's got a number of numbered --

2 MS. SCHMIT: No, it's not.

3 MR. HARRIS: Okay. You said you have another
4 copy? If you could give me that then just so I can follow
5 along.

6 MS. SCHMIT: On disk.

7 MR. HARRIS: Oh, it's on disk.

8 MS. SCHMIT: We provided a copy.

9 MR. HARRIS: I see. Okay.

10 MR. BROWN: I'll tell you what you can use.

11 MR. HARRIS: I probably have it here. I just,
12 mine aren't numbered.

13 MS. ROBESON: I have it, so I know it's in the --
14 is it part of the EYA list of comparables, the second look?

15 MS. SCHMIT: Yes.

16 MS. ROBESON: Okay. So that's the one that Mr. --

17 MR. HARRIS: Okay.

18 MS. ROBESON: -- Armstrong was just --

19 MR. HARRIS: Okay.

20 MS. ROBESON: -- referring to, I think.

21 MR. HARRIS: This? Okay. Thank you. I beg your
22 pardon. I'm ready now. Thank you.

23 MS. ROBESON: Go ahead.

24 MS. SCHMIT: This slide is of EYA's brownstones at
25 Potomac Park. As you can see, the site is surrounded by

1 highways. It's located at I270 and Montrose Road. This is
2 part of a master planned mixed-use community. It consists
3 of about 150 townhomes. There are also two high-rise
4 condominium towers and office buildings and retail stores.
5 This was built on previously undeveloped farm land. As you
6 can see, this development has an 18 percent tree canopy, and
7 this is using the Montgomery County tool. This project is
8 not relevant to the Chelsea site.

9 EYA at Clarendon Market Commons, Virginia. This
10 project was also master planned in the East Clarendon
11 special coordinated mixed-use district plan for the former
12 sears site, and that's in the record at Exhibit 341I. The
13 townhomes are lined in barrack style with street-facing end
14 units. As you can see here, many of the townhomes back into
15 the Market Common retail center. Note in back of the
16 Starbucks on the right, that's the back end of Starbucks.

17 Here is another view.

18 MS. ROBESON: Wait. Can you go back?

19 MS. SCHMIT: Yes.

20 MS. ROBESON: And what's that a view of? It says
21 EYA at Clarendon --

22 MS. SCHMIT: At Clarendon Market Commons. It's
23 actually the same photo as the model that's sitting on the
24 table that hasn't --

25 MS. ROBESON: Okay.

1 MS. SCHMIT: -- been admitted as the exhibit.

2 MS. ROBESON: I see.

3 MS. SCHMIT: And this shows a different
4 perspective than the townhome model that Aakash Thakkar
5 displayed here, again, this week, but hasn't been entered as
6 an exhibit into the record. You can see the parking garage
7 on the left. And on the right-hand side, the townhome. The
8 single family detached homes are adjacent, in the adjacent
9 R-60 neighborhood, are visible. If you can look way down at
10 the end of that alley. This is not characteristic of my
11 neighborhood, which is an established interior R-60
12 neighborhood.

13 I'm going to go up for a second, if you could
14 excuse me. EYA at National Park Seminary. This is a
15 development of apartments, townhomes, and a few single
16 family homes. This was not part of an existing community.
17 It is near the Walter Reed Commissary on the right in the
18 bottom, and there's a tree canopy of 7.5 percent.

19 And as you can see from this slide that I have up
20 now, this is not characteristic of my neighborhood, and
21 certainly not compatible with my neighborhood.

22 MS. ROBESON: Can you describe what this photo is?

23 MS. SCHMIT: Yes, this is a alley in National Park
24 Seminary. I was going to say I took this photo, but my
25 husband probably took the photo. It's a alley looking down,

1 and those are the little, what are called, balconies there.
2 They have the big air conditioning units, and it appears to
3 be a door garage that you see. But that's what the --

4 MS. ROBESON: And --

5 MS. SCHMIT: -- alleys look like.

6 MS. ROBESON: Okay. From where did you take this
7 photo? From the alley?

8 MS. SCHMIT: From the street. It kind of has like
9 a circle and looking out, down one of the alleys.

10 MS. ROBESON: Okay.

11 MS. SCHMIT: EYA at Cameron Hill in Silver Spring.
12 This urban project has 57 townhomes. This development is in
13 the CBD. You can see that's Georgia Avenue slide. And
14 again, you see what the alleys look like. And this looks
15 similar to, apparently, with the garages below and the
16 balconies above to what I understand that they're proposing
17 on my site.

18 I will note, however, that this development of 57
19 townhomes has one entrance into and out of the development.
20 And I know that Mr. Iraola was unable to recall this fact
21 when questioned last week, so I just wanted to refresh his
22 recollection. I would also like to add that this
23 development has an 11.5 percent tree canopy. And as you can
24 see, this development is clearly not compatible with my
25 neighborhood.

1 The bottom line is that none of these existing EYA
2 developments noted are relevant. These townhome
3 developments are all outside of the surrounding area. The
4 relevant test is what is compatible with the surrounding
5 area. The proposed Chelsea site is located completely
6 inside an R-60 zoned neighborhood, as you see here. As
7 others have previously testified, and as the undisputed
8 facts show, there is no comparative of any RT-12.5
9 development inside an interior R-60 neighborhood anywhere in
10 North or West Silver Spring.

11 The density of this proposed development is higher
12 than any other townhome development in North and West Silver
13 Spring, even those that are on major highways and are
14 directly abutting the CBD. We are not on Georgia Avenue, or
15 another major road along the exterior. This site is in an
16 interior neighborhood. An RT-12.5 zone with 63 townhomes
17 and a single family home is far too dense for this location.

18 Applicant's revised schematic plan remains
19 incompatible with my neighborhood. The revised plan fails
20 to address the problems that were supposed to be corrected
21 on remand, including reducing the density and massing in
22 order to be more consistent with the existing R-60
23 neighborhood and the 2000 North and West Silver Spring
24 master plan. This plan clearly fails to incorporate the
25 guidelines of the 2000 North and West Silver Spring master

1 plan.

2 And moving on, this slide shows Cedar Street,
3 south of the Chelsea property. On the left of Cedar Street
4 is the central business district with lots of density and
5 lots more coming. As Jonathan Jay testified during the
6 first hearing, and as he noted in his letter at Exhibit 56,
7 we have 5,000 apartments and condos coming to downtown
8 Silver Spring. Currently, there is a 220-unit apartment
9 building that is going up in the CBD right now, right on the
10 left where you see in this slide.

11 On the right of Cedar Street are single family
12 homes. The proposed site is in an interior R-60
13 neighborhood. During the last hearing, a photo show was
14 submitted by Evo Gochav (phonetic sp.), showing the
15 character of my neighborhood with our detached single family
16 homes, front lawns, back yards, tall, mature trees, abundant
17 vegetation, and open spaces. It is in the record at Exhibit
18 158.

19 The level of density of this revised schematic
20 development plan is still too high compared with the rest of
21 the neighborhood. EYA's new plan also fails to address the
22 issue of massing. The layout of this plan is almost
23 identical to the layout of the previous plan, which was
24 rejected by the District Council. EYA's plan calls for 63
25 townhomes to be aligned in 11 barrack-style rows oriented

1 perpendicular to Springvale Road where I live. There are no
2 visual breaks in this long, massive barrack-like
3 configuration. This creates a barracks effect that is bulky
4 and unsightly. This massive development is nothing like the
5 single family detached homes that characterize my
6 neighborhood. This is not what the remand order intended.
7 This plan is neither consistent with the guidelines of the
8 master plan, nor compatible with my neighborhood.

9 Mr. Iraola testified that the schematic
10 development plan, with its barrack-like configurations, is
11 efficient. The applicant was not directed to make the plan
12 more efficient, but rather to make it more compatible. The
13 new plan remains incompatible.

14 This current plan has failed to incorporate master
15 plan guidelines. Mr. Iraola was unable to articulate how
16 this 12.5, RT-12.5 barracks plan was in compliance with the
17 guidelines of the master plan. The best he could manage was
18 that the townhomes are fee simple homes that will have front
19 doors on the units facing Springvale Road. Applicant has
20 failed to show that this schematic development plan is
21 compatible with my neighborhood, and has failed to
22 adequately respond to the remand order.

23 Now, I'd like to show you some photos of townhomes
24 that have some features that are more compatible with my
25 neighborhood. And I'm showing this, and I'm hoping to

1 provide EYA with some fresh ideas. You're going to have to
2 step over for a moment.

3 MR. BROWN: What exhibit are you referring to now?

4 MS. SCHMIT: 314F. Give everyone a chance to find
5 314F while I close this.

6 MR. HARRIS: Feel like working that? I got it,
7 thanks.

8 MS. SCHMIT: The photos I'm about to show, again,
9 are in Exhibit 314F. The order of these photos has not
10 changed from the, in the order that I'll be showing them.
11 Here are a few townhome developments that are more
12 compatible with the detached single family home
13 neighborhoods than EYA's plan is for the Chelsea School
14 property.

15 The first slide here is the Courts of Woodside in
16 Silver Spring, and this is along Georgia Avenue where
17 townhomes were included in the master plan. There is less
18 massing and density than EYA's plan for Chelsea. There are
19 23 townhomes on 2.7 acres directly on Georgia Avenue. It
20 has 60 percent green space. As you can see from this photo,
21 there are smaller clusters of townhomes, and I have another
22 photo here, you can see that the massing is broken up and
23 that the townhomes blend with the existing homes.

24 Now, this development is directly on Georgia
25 Avenue and not in an interior neighborhood. Now, I'm not

1 saying that this development or the other two I'm showing
2 you are acceptable in my neighborhood. What I'm saying is
3 that they have some features that are more compatible with
4 the detached single family home, my detached single family
5 home neighborhood than EYA's plan is for the Chelsea School
6 property.

7 And the second townhomes are Ottawa Place in
8 Silver Spring. This is a small cluster of townhomes along
9 Georgia Avenue, where townhomes, again were included in the
10 master plan. Massing and density are lower than EYA's plan
11 for Chelsea. As you can see, there are no barracks
12 formation. And as you can see from this photo and the next
13 one, a number of mature trees were protected. This was not
14 a clear cut. Connectivity is established with walking
15 paths. And here, you can see that they all have back yards.
16 There is also a parking lot with one entrance into and out
17 of the parking lot. And again, this is on Georgia Avenue
18 and not an interior neighborhood.

19 And the third example is Fairview Courts in Silver
20 Spring. And this was built in the mid-60s under the Digs
21 Council. Despite being adjacent to commercial properties on
22 two sides, it is still more compatible than EYA's plan for
23 the Chelsea property. As you can see on this photo, the
24 development has only one point of entry for cars.
25 Pedestrian connectivity is established by walking on the

1 sidewalk straight to a walking path which leads into the
2 neighborhood.

3 This development has two strings and a total of 13
4 units. There are only two rows, so it does not have that
5 horrible effect of 11 barracks. Each has his own back yard.
6 It appears as though a number of trees were preserved.
7 There is a single, as you can see here, a single entrance
8 for vehicles. The entrance is on Fairview off Spring
9 Street. You can turn into Fairview Court, but you cannot
10 continue on Fairview into the neighborhood. This limits the
11 impact of traffic on the neighborhood and reduces pedestrian
12 and auto conflicts.

13 Contrary to applicant's assertion, I am not saying
14 that townhomes should look like single family homes. But I
15 believe that townhomes should be compatible with, and relate
16 to, the single family homes in my neighborhood. The
17 development should be compatible with the community in terms
18 of density, massing, green space, trees, tree canopy, and so
19 on.

20 MR. BROWN: Let me ask you this question. You
21 heard hearing examiner Robeson ask us to focus on the issue
22 of massing and density, and other issues as they relate to
23 changes in the project from the earlier plan. Focusing
24 again on how the project has changed, do you have --

25 MS. SCHMIT: Uh-huh.

1 MR. BROWN: -- do you have any additional comments
2 to add in relation to the standards and expectations in the
3 master plan?

4 MS. SCHMIT: Yes. And mostly, I'll focus on
5 density, but I would like to make a comment on the road,
6 which now is coming out on Springvale Road. And before, it
7 was this uncertainty, and now it's, there are two entrances
8 and exits now with the road on Springvale. And I just would
9 like to note, in that regard, just in reference to the
10 master plan, the master plan recommends protecting the
11 residential neighborhoods from commercial and cut-through
12 traffic, and it also notes that the residential character of
13 the neighborhood is affected by traffic. And the plan
14 guides is to improve pedestrian safety and limit the impact
15 of traffic in existing areas. And some of the other
16 townhomes that we have looked at do that.

17 Even where townhomes are part of the master plan
18 on Georgia, the plan notes that vehicular access points
19 should be minimized to reduce pedestrian auto conflicts.
20 And the master plan also guides us to protect the interior
21 from increased development pressure and reaffirms the
22 current zoning, which establishes the density.

23 I'm also concerned about the loss of trees. And
24 again, this is, ties into compatibility with our
25 neighborhood, and also ties into the density. Obviously, if

1 it's a very dense project, you won't be able to save any of
2 these trees. The master plan notes that trees and forests
3 play an important role in the community, such as North and
4 West Silver Spring, providing shade, wildlife habitat,
5 aesthetic beauty, improved quality of life. And you know,
6 they specifically note maintaining this existing healthy
7 tree stock is important to the character of the community.
8 That's on page 91.

9 And I'm going to ask this question. In my view,
10 how can the guidelines of the master plan be achieved? I
11 would argue that density must be further reduced to be more
12 in line with the R-60 zoned homes. Massing must also be
13 reduced. This can be achieved through providing visual
14 breaks, by breaking up the barracks, or reducing them, or
15 providing more space between them, as well as more overall
16 green space, perhaps front lawn and/or back yards. But much
17 more would still be needed.

18 Toward achieving compatibility, the applicant
19 would have to earnestly commit to buying the elements to
20 save as many of the existing healthy trees on the property,
21 thereby maintaining the tree canopy that shields the
22 neighborhood from the CBD and development. I believe the
23 master plan guides us to save, at a very minimum, the
24 irreplaceable old red and white oak trees and as many other
25 healthy trees as possible, as these trees are critical to

1 maintain the character of our Seven Oaks Evanswood
2 neighborhood.

3 And I just would like to note. Mr. Harris was
4 asking some questions to the arborist, Mr. Grove, that
5 "Well, wouldn't you just see a townhouse now, or would the
6 people on Springvale, you know, even be able to see these
7 trees, or would it still block the view with this new
8 development." And my answer is, those trees protect us from
9 the downtown. And they also talked at length about the
10 grade, and how these townhomes would fall at that grade. So
11 when I'm on my porch, which is at an upper grade, the
12 townhomes will be down here, and I need that tree shade to
13 protect me from having to look at the central business
14 district, apartment buildings, and other development.

15 I also believe the master plan guides us to
16 minimize the vehicular access routes in this townhome
17 development to reduce pedestrian auto conflicts, and to
18 limit the impact of traffic in the neighborhood. I believe
19 the master plan logically guides us to limit access to the
20 property to a single road from Ellsworth.

21 In conclusion, I know that the applicant will
22 argue that I'm asking for too much. My response is, they
23 have done far too little. Applicant has done, at best, a
24 bare minimum in a weak attempt to feign compatibility.
25 Their efforts fall far short of what is necessary to achieve

1 compatibility under the guidelines of the master plan.

2 I'm greatly disappointed by their lack, by the
3 lack of effort that the applicant has put into making this
4 project compatible with my neighborhood. They have not
5 worked with SOECA, and have failed to make a good-faith
6 effort to comply with the remand order. Approving their
7 revised schematic plan would render the 2000 North and West
8 Silver Spring master plan meaningless.

9 I urge you to deny the revised schematic
10 development plan. Please do not allow the applicant to
11 clear cut the character of my neighborhood.

12 MS. ROBESON: Thank you. Any more questions, Mr.
13 Brown?

14 MR. BROWN: No.

15 MS. ROBESON: I have a few questions.

16 MS. SCHMIT: Yes.

17 MS. ROBESON: What density here would you find
18 acceptable?

19 MS. SCHMIT: Now, to me, I can answer it a few
20 ways. I would probably say an eight. That would seem
21 reasonable to me. But I could also say, well, what do we
22 need, and I think if we had one road in and out, whether
23 achieved through a cul-de-sac or a "T," if we preserve the
24 trees along the back, or should I say, along the Cedar
25 corner to the right, if we preserve the historic setting, I

1 think we could do things that would reduce -- and those
2 things would reduce the setting, breaking up the massing.
3 And I think even doing that, you can save some trees. But I
4 think the reason we can't do these things is because it's so
5 massive. You know, it's oh, they can only have one road
6 because it's so massive. They can't save trees because it's
7 so dense and massive.

8 I think, I would say, probably an eight.

9 MS. ROBESON: I saw pictures in your
10 presentation --

11 MS. SCHMIT: Uh-huh.

12 MS. ROBESON: -- mostly of the rear alleys.

13 MS. SCHMIT: Uh-huh.

14 MS. ROBESON: Okay. What if you couldn't see
15 those rear alleys? Would your position be the same? What
16 if all you could see was what's shown on this model here?

17 MS. SCHMIT: Again, I don't see any trees on the
18 front of that model, so I would hope that --

19 MS. ROBESON: Well, there's -- okay.

20 MS. SCHMIT: We're looking at a different angle
21 so --

22 MS. ROBESON: Okay. Forget, we're moving, not
23 addressing the trees in the southwest corner of the --

24 MS. SCHMIT: Uh-huh.

25 MS. ROBESON: -- site, if you could just see what

1 you see on the model --

2 MS. SCHMIT: Uh-huh.

3 MS. ROBESON: -- what if you couldn't see the
4 alleys? I'm trying to get at --

5 MS. SCHMIT: What I'm looking at is an alley
6 though. What I'm looking at is a driveway with a balcony
7 above it.

8 MS. ROBESON: I know, but what I'm, what they're
9 saying is, "We're going to screen those alleys," that's what
10 they're saying. They're saying that -- or this is what I'm
11 hearing -- they're saying, "I'm going to screen those
12 alleys. You're not going to see the alleys because you're
13 going to have a double row, or a single row of shady trees
14 screening those alleys."

15 So I guess my question to you, and I don't know,
16 I've never -- well, once, I was briefly in front of Cameron
17 Court, but I've never seen the rear -- let's say, you
18 couldn't just assume for the moment -- and I'm going to do
19 with you what I did with them -- assume for the moment you
20 couldn't see the alleys, and what you saw was what's on this
21 model.

22 MS. SCHMIT: Again, I'm trying to answer your
23 question and not be evasive here. I still would like to see
24 -- again, I know you're saying with the two trees and front
25 lawns and green, because to be compatible, it really kind of

1 has to have the same level of green space, of trees. It's
2 difficult for me --

3 MS. ROBESON: Well --

4 MS. SCHMIT: -- looking at --

5 MS. ROBESON: -- Mr. Brown, could you turn the
6 model toward Ms. Schmit. There.

7 MS. SCHMIT: That would --

8 MS. ROBESON: Now, assume you couldn't see the
9 outside edges, but assume you just saw down the middle.

10 MS. SCHMIT: And I would be looking down the
11 middle at what appears to be vegetation and shrubbery as
12 opposed to asphalt and --

13 MS. ROBESON: Correct.

14 MS. SCHMIT: -- balconies and --

15 MS. ROBESON: Yes.

16 MS. SCHMIT: That would help, although if I could
17 look this way and see it, and turn my head a little way and
18 saw the asphalt, it still would be --

19 MS. ROBESON: Well, say you can't do that.

20 MS. SCHMIT: If I couldn't, then that would be,
21 that would definitely be more acceptable, absolutely.

22 MS. ROBESON: Okay. All right. That was my
23 question.

24 MS. SCHMIT: Now, is that going to be admitted as
25 an exhibit? It's played --

1 MS. ROBESON: There is a photo.

2 MS. SCHMIT: -- such a role in this hearing.

3 MS. ROBESON: There's a photo.

4 MS. SCHMIT: Uh-huh. But it doesn't really have
5 that dimension --

6 MS. ROBESON: That's --

7 MS. SCHMIT: -- that we've turned and --

8 MS. ROBESON: That's a good point.

9 MS. SCHMIT: Oh, we've switched --

10 MS. ROBESON: Is EYA, I mean, that, we are
11 referring to it, and I'm saying, pretend it doesn't have
12 this. Do you have an issue with submitting it if it's
13 returned?

14 MR. THAKKAR: No. I mean, at the end of the
15 day --

16 MS. ROBESON: I --

17 MR. HARRIS: I mean, it's an expensive item --

18 MS. ROBESON: I know.

19 MR. HARRIS: -- so it has to be protected.

20 MS. ROBESON: I was going to say, I --

21 MR. THAKKAR: Well, it's what you said, as long as
22 it's returned. I mean, we display it prominently in the
23 office. It's kind of one of the examples of what we do.

24 MS. ROBESON: Yes. I will say it's expensive.
25 Could you keep it here until the County Council hearing?

1 MR. THAKKAR: Yes. Yes, we can.

2 MS. ROBESON: All right. Then we will admit it as
3 Exhibit -- oh -- 339. And this is a model of Clarendon --
4 what's it called?

5 MR. THAKKAR: Park.

6 MR. HARRIS: Park.

7 (Exhibit No. 339 was marked
8 for identification and received
9 into evidence.)

10 MS. ROBESON: Okay. Okay. It's your turn. I
11 couldn't remember where I was for a minute. Okay. Go
12 ahead.

13 MR. HARRIS: A couple questions, Ms. Schmit. As
14 with the question I asked Mr. Armstrong, some of the
15 examples that you cite, particularly, Clarendon, Courts of
16 Woodside, and Ottawa, they all adjoin single family
17 residential homes, don't they?

18 MS. SCHMIT: The Clarendon is part of a mixed-use,
19 and it does adjoin. The Ottawa is on Georgia Avenue and
20 does, in the back, adjoin, but it's on Georgia Avenue and
21 that was master planned. And what was the third one you
22 mentioned?

23 MR. HARRIS: The Courts of Woodside.

24 MS. SCHMIT: The Courts of Woodside, which was
25 also master planned and on Georgia Avenue, yes, also does,

1 yes.

2 MR. HARRIS: Adjoin single family --

3 MS. SCHMIT: Yes.

4 MR. HARRIS: -- detached. Okay.

5 MS. SCHMIT: Uh-huh.

6 MR. HARRIS: And you mentioned that the Cedar
7 Street is the boundary of the R-60 neighborhood, but as
8 we've talked before, I just want to make sure you're
9 including the fact that there are non-RT, I mean, non-R-60
10 zoned properties on the neighborhood side of Cedar, most,
11 specifically being the CO for the Colesville Towers and for
12 the office building that's next to that. That's north of
13 Cedar, right?

14 MS. SCHMIT: That is. Yes, that's not touching on
15 the property, that doesn't abut the property.

16 MR. HARRIS: No, but I just want to clarify. You
17 said that Cedar was the boundary for the R-60 neighborhood,
18 but it's --

19 MS. SCHMIT: That is correct.

20 MR. HARRIS: -- also, there are non-R-60
21 properties on --

22 MS. SCHMIT: Previously --

23 MR. HARRIS: -- the neighborhood side of Cedar.

24 MS. SCHMIT: That is correct.

25 MR. HARRIS: And there is RT zoning on, within the

1 neighborhood, as we talked, before the park. It isn't
2 developed that way, but it is zoned RT.

3 MS. SCHMIT: The park, the public park is, in
4 fact, yes --

5 MR. HARRIS: Right.

6 MS. SCHMIT: -- RT.

7 MR. HARRIS: And of court, the library, it may be
8 zoned R-60, but it's certainly not an R-60 used.

9 MS. SCHMIT: The library is a library, that's
10 correct.

11 MR. HARRIS: Right. And, okay. Just to clarify,
12 you mentioned the picture Cameron Hill, and I think you said
13 you, that the photo showed Georgia Avenue. That actually is
14 Cameron Street, isn't it?

15 MS. SCHMIT: No. Cameron Street is where the road
16 turns in. I actually showed the photo. I can go back and
17 go through it. I showed one photo on Georgia Street, and
18 then the road is on -- you want, actually, I apologize --
19 you are --

20 MR. HARRIS: Yes.

21 MS. SCHMIT: -- you are correct, you are correct
22 there.

23 MR. HARRIS: Okay.

24 MS. SCHMIT: I apologize and --

25 MR. HARRIS: Yes.

1 MS. SCHMIT: -- I do stand corrected with that.

2 MR. HARRIS: Are you aware that the plan for the
3 Chelsea School has considerably more green space than
4 virtually any one of these townhouse projects that have been
5 cited here?

6 MS. SCHMIT: The Woodside has 60 percent green
7 space --

8 MR. HARRIS: Okay. And we'll come to that one.

9 MS. SCHMIT: -- so I don't think that's, I don't
10 believe that's accurate, Mr. Harris. You said the --

11 MR. HARRIS: Well, the others? Ottawa? Fairview?

12 MS. SCHMIT: I can only tell you that, I believe I
13 looked up some of the green spaces. No, I didn't look up
14 all of them. I can tell you that the Ottawa has preserved a
15 number of old, a number of trees, a significant number of
16 the old trees. In fact, I've been there and I've talked to
17 a number of the residents who live there --

18 MR. HARRIS: Yes.

19 MS. SCHMIT: -- and they have preserved a number
20 of old trees, so it does help to look green.

21 MR. HARRIS: Could you pull that photo up, because
22 I had a question about that as well.

23 MS. SCHMIT: Yeah, Ottawa here. As you can see,
24 that's Ottawa Place. It's smaller.

25 MR. HARRIS: Right.

1 MS. SCHMIT: Also, I think we need smaller, it
2 helps too. Here, you can see there are a number of old
3 trees.

4 MR. HARRIS: How old are those trees?

5 MS. SCHMIT: Well, I've talked to, I talked to one
6 resident who'd been in the townhomes 13 years, and she said
7 they were huge and big and beautiful when she moved in. And
8 I could not tell you the exact age of all of them, but there
9 are a number of them that were there.

10 MR. HARRIS: You don't think those trees were
11 planted when those townhomes were built?

12 MS. SCHMIT: No, I don't know about these. But
13 the ferns, and there were some that were actually in back
14 yards, that are actually in the back yard, and they were,
15 they've been there. Now, you don't, maybe that, maybe this
16 one down here that were already in the back yards.

17 MR. HARRIS: Okay.

18 MS. SCHMIT: I'm not telling you I've done
19 historic research on this; I'm telling you I've talked to
20 the neighbors, and I looked around -- the residents who live
21 there -- and I looked around.

22 MR. HARRIS: The Courts of Woodside, I think you
23 said that you appreciated the fact that it had 60 percent
24 green space?

25 MS. SCHMIT: Uh-huh.

1 MR. HARRIS: All right. And you're aware that
2 we're binding ourselves to a minimum of 50, but the plan is
3 showing more than that, and that there's a good likelihood
4 we'll have more than 50 percent?

5 MS. SCHMIT: As I said, my point was that is on
6 Georgia Avenue and has 60 percent green space. I would
7 assume something that's in the interior of an extremely
8 green canopy, canopied area, would probably have, at a
9 minimum, 70, 75 percent.

10 MR. HARRIS: Do you know what the minimum green
11 space requirement for the R-60 zone is?

12 MS. SCHMIT: I don't know. I only know that my
13 neighborhood has about 75, 78, I believe. I know it's in
14 the upper 70s.

15 MR. HARRIS: Not tree canopy --

16 MS. ROBESON: No --

17 MR. HARRIS: -- not tree canopy.

18 MS. ROBESON: No help from the audience, okay,
19 because --

20 MR. HARRIS: Not tree canopy, green space.

21 MS. SCHMIT: No, but I think --

22 MR. HARRIS: Okay.

23 MS. SCHMIT: -- I think --

24 MR. HARRIS: Okay.

25 MS. SCHMIT: -- tree canopy and trees, in some

1 ways, is more important.

2 MR. HARRIS: You're aware that the Courts of
3 Woodside has two points of entry?

4 MS. SCHMIT: I'm aware that they have one, they
5 have one road on Georgia Avenue, you can go in and out each
6 way, and then they have basically a cul-de-sac. You can go
7 down one road and then you can go right or left into and out
8 of the place, but then you're blocked. You can right one
9 way and you cannot get out, left one way and you cannot get
10 out. But there's one road, and yes, you can, it's not
11 blocked one way --

12 MR. HARRIS: It looks --

13 MS. SCHMIT: -- so you can go. I was --

14 MR. HARRIS: Excuse me.

15 MS. SCHMIT: I was just there this weekend again
16 for probably the fifth time, so I'm thoroughly certain of
17 what it looks like.

18 MR. HARRIS: It looks to me as if there is a road
19 that cuts through the center of it.

20 MS. SCHMIT: Let me try to see --

21 MR. HARRIS: It's going from Georgia Avenue to
22 Second Avenue.

23 MS. SCHMIT: That's what, let's see, let's get
24 there.

25 MR. HARRIS: Right there.

1 MS. SCHMIT: It's right there. There is -- and I
2 can get up, and I'll show you.

3 MR. HARRIS: Isn't this a road --

4 MS. SCHMIT: Yes. That's --

5 MR. HARRIS: -- that cuts through here?

6 MS. SCHMIT: Yes.

7 MR. HARRIS: Okay. So it has two ways in and out,
8 including one into the neighborhood.

9 MS. SCHMIT: Yes, sir. And I didn't say that was
10 one of the things I liked; I said some of the townhome
11 developments have things that are more desirable. And I
12 didn't note that as being one of the more desirable features
13 of this community, nor did I say that this community would
14 be acceptable in my neighborhood. What I said, just to
15 clarify for you, was that this had 60 percent green space,
16 that they broke up the massing, and they didn't really have
17 that barrack style.

18 MR. HARRIS: I understand that, but I'm just
19 trying to clarify. You were very careful to point out the
20 ones that had one point of access --

21 MS. SCHMIT: Yes.

22 MR. HARRIS: -- including one that had only 11
23 units, but you didn't point out this. I just want to make
24 sure the record's clear that this has two points of
25 access --

1 MS. ROBESON: Okay. Are you --

2 MR. HARRIS: -- including one into the
3 neighborhood.

4 MS. ROBESON: -- testifying?

5 MS. ROBESON: Is there a question there, Mr.
6 Harris?

7 MR. HARRIS: Is what I said correct?

8 MS. SCHMIT: Mr. Harris, you can testify --

9 MR. HARRIS: Okay.

10 MS. SCHMIT: -- if you want.

11 MS. ROBESON: Let's do this. Okay.

12 MS. SCHMIT: You can take, you can go --

13 MS. ROBESON: Ms. Schmit.

14 MS. SCHMIT: under oath and testify.

15 MR. HARRIS: Okay.

16 MS. ROBESON: No. Let's stop. Are there two
17 points of access?

18 MS. SCHMIT: There is one road and you can enter
19 from both sides, so yes --

20 MS. ROBESON: Okay.

21 MS. SCHMIT: -- there's two points of access on
22 this townhome community in Woodside Park, and that was not
23 one of the features that I noted would be desirable about
24 this.

25 MS. ROBESON: I understand --

1 MS. SCHMIT: I was pointing to slacked features.

2 MS. ROBESON: -- what you're saying. Okay.

3 MR. HARRIS: You mentioned -- well, you talked
4 about Ottawa Place, I think, and the density there?

5 MS. SCHMIT: I don't believe I talked about the
6 density --

7 MR. HARRIS: Okay.

8 MS. SCHMIT: -- of Ottawa Place at all.

9 MR. HARRIS: Okay. Are you aware of what the
10 density is?

11 MS. SCHMIT: I'm not aware of the density.

12 MR. HARRIS: Okay. And what about Fairview Court,
13 are you aware of the density there?

14 MS. SCHMIT: I'm aware that that's a dense one.
15 What I noted was that, even the, you can also have strings,
16 but there are only two of them, and I noted that what I
17 liked about that, the feature, was that it had pedestrian
18 connectivity and not vehicular connectivity; that it was one
19 road in, one way in and out, and that it did not, because
20 there were not so many of them, it did not appeal, appear as
21 massive, even though it may have massing.

22 MR. HARRIS: But I think you did say that both
23 Ottawa Place and Fairview Courts were more compatible with
24 the neighborhood.

25 MS. SCHMIT: No, I didn't say that. I said they

1 had features. I made, I was, in fact, I tried to be
2 incredibly clear not to say that. In fact, I can go back
3 and, what I said was they had features --

4 MR. HARRIS: Okay.

5 MS. SCHMIT: -- that were more compatible. And
6 let me just, you know, again, I said I'm not saying that
7 this development or the other two will -- I will show you
8 -- are acceptable in my neighborhood; I'm saying that they
9 have some features that are more compatible with the
10 detached single family homes in my neighborhood.

11 MR. HARRIS: Okay.

12 MS. SCHMIT: Is that clear?

13 MR. HARRIS: Yes.

14 MS. SCHMIT: Because I can --

15 MR. HARRIS: No, no.

16 MS. SCHMIT: -- elaborate a little further.

17 MS. ROBESON: Okay. It's clear.

18 MR. HARRIS: That's fine.

19 MS. ROBESON: He said it's clear.

20 MR. HARRIS: Okay. That's it.

21 MS. SCHMIT: Okay.

22 MS. ROBESON: All right.

23 MS. SCHMIT: Always a pleasure, Mr. Harris.

24 MS. ROBESON: Wait, Ms. Schmit. Mr. Brown, do you
25 have any other questions?

1 MR. BROWN: No.

2 MS. ROBESON: It's all said. Okay. Thank you.

3 MR. BROWN: Peter?

4 MS. SCHMIT: I'll shut this down. I just want to
5 get this out.

6 MR. BROWN: Okay.

7 MS. ROBESON: Yes, sir. Your name and address,
8 please.

9 MR. PERENYI: My name is Peter Perenyi. I live at
10 713 Woodside Parkway. I wanted to talk about --

11 MS. ROBESON: And you were previously sworn.

12 MR. PERENYI: I was not previously sworn.

13 MS. ROBESON: Okay. Please raise your right hand.

14 (Witness sworn.)

15 MS. ROBESON: All right. Go ahead.

16 MR. PERENYI: When I moved to the affected
17 neighborhood in -- let me just say by way of introduction
18 that I think the applicant, supported by the Planning Board,
19 has tended to minimize the existence of any problem of cut-
20 through traffic. So I'd like to say that when I moved to
21 the affected neighborhood in 1990, dodging cars was the
22 major hazard on narrow streets. We have few sidewalks in
23 the neighborhood, and people walk in the streets.

24 And ours is not a neighborhood really where
25 building new sidewalks is a practical solution, at least

1 without destroying well-developed gardens that go right up
2 the curve, to the curb, and they're a cherished feature of
3 our neighborhood. Fortunately, neighborhood volunteers
4 worked hard to win the 66 percent approval, which was then
5 required for a traffic protection plan. The households not
6 voting were effectively counted as voting no. And neighbors
7 who were in the neighborhood then remember that the
8 resulting traffic protection plan made a major difference.

9 We now hear that cars will be able to pass through
10 our neighborhood via an opening on Springvale Road, and able
11 to enter Chelsea Court from the downtown, effectively,
12 opening us to cut-through traffic. This is against the
13 background of an ever-growing downtown, including new
14 apartments on Cedar Street on our southern border near the
15 opening to EYA's development.

16 That the county considered cut-through traffic a
17 serious problem is clear from the emphasis on traffic
18 protection in the master plan, the repeated statements of
19 county officials to meetings in the neighborhood about the
20 importance of protecting us from downtown traffic, and
21 finally, the expensive modifications made to the downtown
22 side of Ellsworth Drive to block cut-through traffic to and
23 from the downtown.

24 The county-approved traffic protection plan also
25 blocked downtown access to Pershing Drive, which is exactly

1 where the proposed private road exit on Springvale Road
2 would now divert traffic. We have heard of a little
3 experiment that was made. I assume, if this was a careful
4 experiment, it must have been made during afternoon rush
5 hour over several days, although I don't know that, and
6 showed that it apparently is not faster to use the interior
7 of the neighborhood than to turn out onto Colesville Road.
8 However, this is the kind of argument that could have been
9 made, of course, at the time that the traffic protection
10 plan was installed, the only difference being a couple more
11 turns.

12 We all know that traffic is highly variable, and
13 that the results you can get on four days running may not be
14 the same result that you'd get on the fifth day. Not only
15 that, this did not take into account, or provide any
16 substantial analysis, of future traffic growth. Certainly,
17 traffic congestion is unlikely to diminish anytime soon, and
18 it is not difficult to imagine developments increasing
19 driver frustration and making cut-throughs increasingly
20 attractive.

21 For example, the construction of the purple line
22 narrowing Wayne Avenue, the main north/south route from the
23 downtown, increasing traffic on Cedar Street from the
24 growing downtown, including new apartment units that have
25 been mentioned that could tempt right turns into the

1 neighborhood to avoid longer waits to enter northbound
2 Colesville Road via Cedar, and finally, an additional turn
3 lane on Dale Drive on our northern border that will soon
4 offer relief from backups there and faster access to
5 Colesville Road.

6 Traffic from the development itself is a lesser,
7 yet still significant concern. The Board has focused on,
8 the Planning Board, and I believe the applicant, has focused
9 on peak-hour traffic, comparing it to the Chelsea School's
10 existing and future use. I would just point out that the
11 future plan that was approved for the expansion of the
12 Chelsea School called for a parking lot not accessible from
13 the neighborhood, but 84 cars and all the school buses. But
14 the essential point is that school traffic is really peak-
15 hour traffic. For a residential area, off-peak-hour traffic
16 will be in addition to about twice that of peak-hour
17 traffic, according to figures in the May 19th Planning Board
18 testimony by Dr. Cirillo, a traffic engineer who has done
19 work for the state.

20 In order to avoid duplicating testimony, I will
21 just leave that there and leave the discussion of what the
22 applicant has proposed and the common sense solution that we
23 favor to Mr. Gurwitz, who will testify later.

24 MS. ROBESON: Okay. And are you aware of the,
25 it's not just the turns; I think it's also signage

1 prohibiting left turns on Springvale and a channelization on
2 Springvale lanes so you can only right, or to give it a
3 right turn?

4 MR. PERENYI: I am. And if I may address that
5 using a diagram.

6 MS. ROBESON: Which diagram?

7 MR. PERENYI: The one which stands on the easel to
8 the --

9 MS. ROBESON: Okay.

10 MR. PERENYI: -- to the right there. I think that
11 would be helpful. I had planned to leave this to Mr.
12 Gurwitz, but since you asked --

13 MS. ROBESON: Well, I can wait. If Mr. Gurwitz is
14 going to address it, I can wait for him.

15 MR. PERENYI: Do you want to --

16 MR. GURWITZ: I'm prepared to. I'm not sure what
17 you're going to say about it.

18 MS. ROBESON: Go ahead. You go ahead and say what
19 you want to say.

20 MR. PERENYI: Okay. Let me first of all get
21 oriented here. While I live in the neighborhood, that
22 doesn't mean I have to kind of orient myself. As I
23 understand it, or as I pointed out, first of all, Pershing
24 Drive is, itself, an excellent cut-through route. It is now
25 blocked by "Do Not Enter" signs.

1 What the diversion will do, it'll lead traffic
2 around a bit, but this, we're talking about frustrated
3 drivers in serious traffic conditions, and what they will
4 do. It still offers a quick entry to the Pershing cut-
5 through right up here, and right away, they're on Pershing.
6 And a statement's also been made that that will discourage
7 turns down to Ellsworth Drive, where all you have to do is
8 go up here and turn down to Ellsworth Drive and take that
9 through. It's a little wider. I don't see the advantage of
10 it over Pershing.

11 The second thing is signage. I have talked to the
12 Montgomery County Police Traffic Department, and there is a
13 law, and I do think Mr. Gurwitz that says, essentially, that
14 ordinary traffic rules aside from something like reckless
15 driving cannot be enforced on a private community such as
16 this. So wherever the signs, whatever signage is put up by
17 the applicant is not enforceable.

18 As to the enforceability of private drive signs, I
19 don't see how you can tell the difference between the
20 legitimate visitor and someone who says he's a legitimate
21 visitor if he's stopped, or just looking, or interested in
22 buying, short of having a gate and a guard. And nobody's
23 suggesting that.

24 But I can tell you that the most heavily
25 trafficked corner anywhere near the neighborhood is right

1 here where people come in and out using the library. They
2 can't get in because of the, into the neighborhood from
3 here, although they can go out and turn right. The
4 library's actually a left turn to downtown. Well, a lot of
5 people drive through here. If there's that private drive
6 sign, a lot of people are going to see it, it's going to be
7 a very attractive nuisance, and I don't see how they can
8 possibly enforce that. And some people respect signs, some
9 people don't, even county signs.

10 MS. ROBESON: Okay. Mr. Brown, do you have any
11 questions?

12 MR. BROWN: No.

13 MS. ROBESON: Okay. Mr. Harris?

14 MR. HARRIS: I didn't quite catch your name. Is
15 it Mr. Perenyi?

16 MR. PERENYI: Perenyi.

17 MR. HARRIS: Perenyi. I think you acknowledge
18 though that the signs in the neighborhood do work today. It
19 has stopped the cut-through.

20 MR. PERENYI: That's not the case. We've seen
21 cut-throughs and people ignoring signs.

22 MR. HARRIS: Well, I thought you also said the
23 streets are very quiet though, you can walk in the streets.

24 MR. PERENYI: There are cut-throughs. I think
25 there's been a huge improvement since the traffic protection

1 plan's been put in place.

2 MR. HARRIS: How do you know who a cut-through is?

3 MR. PERENYI: There are, you know, you see people
4 turning, if people go past the sign that nobody, including
5 people in the neighborhood are supposed to go through, that
6 counts as a cut-through. If you watched, if you are
7 standing by a sign that says "No Left Turn," and people make
8 left turns, that's a cut-through.

9 MR. HARRIS: And that couldn't be a neighbor?

10 MR. PERENYI: I don't, if you're asking me whether
11 I've surveyed whether it's neighbors cutting through or
12 others cutting through, the answer is no, I haven't. I have
13 no way of doing that.

14 MR. HARRIS: Okay. No further questions.

15 MS. ROBESON: Thank you. Anything further, Mr. --

16 MR. BROWN: No.

17 MS. ROBESON: Okay. Thank you. And I take it,
18 Mr. Gurwitz is next.

19 MR. BROWN: Yes, he is.

20 MS. ROBESON: And I know you were here Friday, so
21 you're still under oath.

22 MR. GURWITZ: Yes. If I may have a moment to set
23 up some exhibits.

24 MR. BROWN: Are you going to use the projector?

25 MR. GURWITZ: Yes, I am. And Aakash, could you,

1 please, could you get the comparison of your old schematic
2 and new schematic?

3 MR. THAKKAR: Sure.

4 MR. GURWITZ: Thank you. I might need an
5 assistant with the slides. It's not -- it's too big for the
6 screen, but I'll get that today.

7 MS. ROBESON: Okay.

8 UNIDENTIFIED SPEAKER: Evo is going to help you.

9 MR. GURWITZ: Oh, thank you, Evo.

10 MR. HARRIS: Did it yourself. You didn't need the
11 techie.

12 MS. ROBESON: Would it help if you put the board
13 the other way?

14 MR. GURWITZ: Well, I think, you can see that, I
15 can write it.

16 MS. ROBESON: Okay. I can, I'm fine.

17 MR. GURWITZ: Thank you, Evo.

18 MR. BROWN: State your name and address, please.

19 MR. GURWITZ: My name is Michael Gurwitz. I live
20 at 8607 Springvale Road in Silver Spring, directly across
21 from the Chelsea School property.

22 MR. BROWN: Mr. Gurwitz, I understand you've got
23 two issues on your agenda today, is that right?

24 MR. GURWITZ: I do. I'd like to preface my
25 testimony by saying that I've lived at this location for

1 more than 12 years, and for the last two years, I have had
2 the honor of serving on the Chelsea School, the SOECA
3 Chelsea School Task Force.

4 I am going to be testifying on two main issues;
5 that would be the issues of massing and the alignment of the
6 private road proposed by EYA. I believe that EYA's new
7 schematic development plan has failed to meet the
8 compatibility and other requirements outlined in the
9 remand's order, and should therefore be denied.

10 MR. BROWN: Now, would you go over your points on
11 massing?

12 MR. GURWITZ: All right. As I said, I do not
13 believe that EYA's new plan has massing that is compatible
14 with our neighborhood. I have pulled out, I have placed
15 Exhibit 314B, the large photo of barracks from the 1950s,
16 and they are remarkably similar to EYA's new plan, in that
17 they have two rows of long units, one after another. And
18 interestingly enough, there's a single family detached home
19 to the north, and a large green space over, if you could see
20 it, to the left, which would be analogous to the Riggs-
21 Thompson House. Nevertheless, these are barracks, these are
22 actual barracks.

23 I also have another slide on the screen which is,
24 I believe it's also 314B, that compares that photo to EYA's
25 new schematic so you can see the similarities between the

1 barracks at the top and the barrack-like pattern that
2 they've given us on the bottom. Now, I'd like to describe
3 the plans, old and new.

4 The old plan had 76 townhouses arranged in
5 parallel rows, designed like barracks with either six or
6 eight townhouses per barrack in the front row, and seven or
7 five townhouses per barrack in the back row. Each row of
8 barracks was equally long depending on the size of the
9 townhouses. The massing was terrible. Looking at from my
10 front porch, I would have seen row after row of solid wall
11 stretching all the way across the Chelsea School property.
12 In no way, could that be considered compatible with my
13 neighborhood of single family detached homes.

14 Now, the new plan is hardly any better. It has 60
15 feet townhouses arranged in two parallel rows designed like
16 barracks, with either five or seven townhouses per barrack
17 in the front row, and five or seven townhouses per barrack
18 in the back row. Each row of barracks is equally long
19 depending on the size of the townhouses. The massing is
20 still terrible. And looking out from my front porch, I will
21 still see row after row of solid wall stretching all the way
22 across the Chelsea School property. I believe that EYA can
23 do better.

24 I'd like just to briefly read a definition of
25 massing, which is Exhibit 314C. It's from the Merriam

1 Webster Dictionary. "It is a large quantity amount or
2 number, a great mass of material." EYA can break up those
3 rows of barracks into smaller less bulky sections, or into
4 little groups arranged in different shapes. This would let
5 in more light and more greenery. Doing so could even save
6 more of the beautiful mature trees now growing on the
7 property.

8 MR. BROWN: Before we move on, Mr. Gurwitz, you
9 heard Mr. Armstrong crunch the numbers regarding to massing.
10 Do you have any disagreement with his numbers?

11 MR. GURWITZ: No. I was very impressed with Mr.
12 Armstrong's research.

13 MR. BROWN: Okay. What about the density of the
14 project?

15 MR. GURWITZ: I believe the density is still far
16 too high, and I would reference back to Mr. Armstrong's
17 testimony on that. Reducing the density would have many
18 benefits. As I said, it would allow EYA to break up this
19 barracks-like massing. It would allow them to have only one
20 access road, which I'll be getting to soon. And as I said,
21 it would allow them to save more of the beautiful trees on
22 the property.

23 And even though this would not be considered cut-
24 through traffic, the townhouse development itself is still
25 going to have perhaps 126 cars, and so the way things are

1 set up now, that's still a lot of traffic coming into my
2 neighborhood via Springvale Road. So if you reduce the
3 density of units, you'll be reducing the number of cars that
4 could be coming into our neighborhood.

5 I also just want to point out, but I'm not going
6 to discuss if further, that the county has rejected EYA's
7 stormwater proposal, their management proposal, which is at
8 that letter, Exhibit 3410. And though I am not an expert, I
9 would assume that lower density and more green space and
10 more trees would lead to more, less stormwater problems.

11 MR. BROWN: How do you feel about the plan to put
12 an access road that exits out to, or enters from Springvale
13 Road?

14 MR. GURWITZ: I am absolutely opposed to an access
15 road on Springvale Road.

16 MR. BROWN: And would you explain your opposition?

17 MR. GURWITZ: As Mr. Perenyi has just testified,
18 building an access road onto Springvale Road will open our
19 neighborhood to cut-through traffic from downtown Silver
20 Spring. As Mr. Perenyi testified, approximately 20 years
21 ago, Montgomery County worked with SOECA to solve the
22 problems of cut-through traffic to and from downtown Silver
23 Spring. They installed traffic restrictions at county
24 expense in response to residents' concerns. I've been told
25 by long-time neighbors, like Mr. Perenyi and Mr. Millson,

1 that traffic on my road was terrible prior to those
2 restrictions. And I think, logically, the county would not
3 have installed those restrictions had that not been the
4 case. I've also been told, as I can tell from my own
5 experience, that the traffic is, that problem is obviously
6 no longer there.

7 Now, that was 20 years ago before Silver Spring
8 was revitalized. We now have theaters, we have restaurants,
9 we have a Whole Food supermarket, we have the Fillmore
10 Nightclub, we have Veterans Plaza. And on weekend nights
11 when downtown is hopping, the garage on Ellsworth Drive
12 south of Cedar, normally you can turn left or right onto
13 Ellsworth Drive, but when things are really busy in
14 downtown, as is often the case on weekend nights, they will
15 not let you exit out of the garage and turn right on
16 Ellsworth; they will direct you left onto Ellsworth towards
17 Cedar. And so those people could be some of the people who
18 will cut through our neighborhood.

19 We also have the Citron multiple-unit apartment
20 building with 222 units that will be opening this fall,
21 according to their website. That's going to be 222 units
22 with who knows how many cars right across Cedar Street, so
23 again, you just, you'll have so much more traffic, potential
24 traffic than you had 20 years ago. I don't see how it could
25 be, not be worse if there's cut-through, if this road goes

1 through as planned and allows the cut-through.

2 MR. BROWN: Now, you've heard, you heard the
3 testimony from the applicant that cut-through traffic is not
4 going to be increased by having an access off Springvale,
5 didn't you?

6 MR. GURWITZ: I heard them allege that, yes.

7 MR. BROWN: But you disagree with their
8 conclusions, is that right?

9 MR. GURWITZ: I do indeed.

10 MR. BROWN: And explain why.

11 MR. GURWITZ: Well, I don't want to be too
12 repetitive of what Mr. Perenyi explained on how that would
13 work, but essentially, people from downtown could cross
14 Cedar Street, they would be on Ellsworth or Cedar, they
15 would cross Cedar Street north, turn right onto Ellsworth
16 Drive. Right now, they're stopped from entering the
17 neighborhood because of the "Do Not Enter" sign right south
18 of Springvale. But if they have this internal road, then
19 people can just turn right into the townhouse development
20 and exit on Springvale, and from there, into my
21 neighborhood.

22 Now, Mr. Kabatt and EYA's other traffic experts
23 have assured us that the cut-through traffic won't be that
24 bad. They've used their models, they've used their
25 statistics. But I've just described a number of

1 uncertainties to you, and so I think what EYA is arguing
2 boils down to, "Trust us, you have nothing to worry about."
3 But that is not good enough for me.

4 MR. BROWN: How about using signs as, if signs
5 have been effective in the past, why won't signs be
6 effective in the future?

7 MR. GURWITZ: Well, it depends on the signs and
8 where they're located. These signs are going to be erected
9 on private property. And we've entered an exhibit at 315T,
10 which is a Maryland Attorney General's opinion of August
11 7th, 1974. And the way I read that case, that opinion, the
12 police cannot enforce traffic control signs erected on
13 private property. And I believe the point of that case, the
14 issue was actually, they can't even control, they can't
15 police whether or not people drive with driver's licenses on
16 private roads.

17 MS. ROBESON: What exhibit was that?

18 MR. GURWITZ: This is 314T, like Thomas.

19 MS. ROBESON: Okay.

20 MR. GURWITZ: But what I draw from that, and what
21 Mr. Perenyi also drew from that case is that the police
22 cannot enforce traffic control signs erected on private
23 properties. And I think EYA has acknowledged this because
24 on Friday, Mr. Kabatt testified that the townhouse residents
25 will enforce the traffic signs themselves, but I find that

1 hard to believe. First of all, it's going to require that
2 they recognize all of each other's faces in cars, and that
3 does not seem likely to happen. Second, how are they going
4 to be able to distinguish between trespassers, between
5 residents' guests, between residents' out-of-town family
6 members who are visiting? How would they be able to do
7 that? I couldn't do that. And also, how will they even
8 know somebody is cutting through?

9 As you look at the proposed road, it's an L shape.
10 Now, if people enter via Ellsworth and they exit via
11 Springvale, how will the people who live on either side,
12 either end of that road know if that car entered 30 seconds
13 ago or two hours ago? They won't know. So I find it hard
14 to believe that the residents will be able to determine who
15 is cutting through, much less police it.

16 Mr. Kabatt then cited section 31-2 of the
17 Montgomery County Code, stating that this section of the
18 code provides that traffic control signs on private property
19 could have the same effect as such signs placed on public
20 property. I read that section of the code. It's true.
21 However, what Mr. Kabatt did not say, or perhaps, he did, I
22 want to emphasize, for this to happen, there has to be an
23 executive order from the county executive authorizing that.
24 Right now, there is no guarantee such an order will be
25 issued.

1 Now, I know that EYA argues that the mere presence
2 of signs and the special pavers will discourage people from
3 coming through the site, but as with the assurances they
4 gave us on the cut-through traffic, this all comes down to
5 conjecture and speculation. And I do not believe that can
6 be relied upon.

7 MR. BROWN: Let's move on to the movement of
8 traffic out of the internal roadway and onto Springvale.
9 You heard the testimony about channeling traffic rightward.
10 Does that alleviate or solve the problem?

11 MR. GURWITZ: Well, I'd like to say some things
12 about that since, having lived in the neighborhood for so
13 long, I'm very familiar with all of this. When I want to go
14 to Colesville Road to head north toward the beltway, or Four
15 Corners Shopping Center, or all the other shopping centers
16 and things north on Colesville Road, what I do is, I drive
17 west down Springvale towards Ellsworth Drive, I make a right
18 turn at Ellsworth, I take it down to Dale Drive, I make a
19 left on Dale, I make a right onto Colesville Road.

20 Now, EYA is saying that their porkchop will force
21 people to turn right onto Springvale, be channeled to have
22 the people leave the development, go right. And from there,
23 if they want to go to Colesville north, well, they will just
24 turn left on Pershing Drive and head north up Pershing, go
25 to Dale, make that left on Dale, and then go to Colesville

1 Road.

2 This is why they are not going to do that more
3 than once or twice. The sight lines at Pershing and Dale
4 are terrible. Dale's a very heavily trafficked road.
5 There's a hill right near that intersection.

6 MS. ROBESON: Which intersection?

7 MR. GURWITZ: Of Dale and Pershing Drive.

8 MS. ROBESON: Dale and Pershing.

9 MR. GURWITZ: Yes.

10 MS. ROBESON: Okay.

11 MR. GURWITZ: Okay. Heading north on Pershing,
12 and you want to make a left turn on Dale, I personally find
13 it a pretty dangerous turn. I don't like doing it. So
14 that's why I avoid doing it whenever I can. I make the
15 right, I go down Ellsworth Drive to Dale because the sight
16 lines are much better when you're turning onto Dale Drive.
17 And I think that the residents of this development will soon
18 learn that too.

19 I also would like to talk about the porkchop and
20 what effect it might really have on discouraging people from
21 turning left. I also have pretty good first-hand knowledge
22 with this. My parents live in a retirement community in
23 Wayne, New Jersey, and they have a porkchop that steers them
24 right when they exit their development. And ironically, to
25 the left is the main downtown, the main road; to the right

1 is a supermarket. So it's kind of like in my neighborhood
2 where if you would go to the left, you could get to
3 Ellsworth and Colesville, and to the right, you get to the
4 supermarket.

5 So what do people do when they get to that
6 porkchop, and that says you can only go right? They make a
7 wide left turn. They all do it. I do it when I visit my
8 parents. All these retired citizens who you would expect to
9 be among the most law-abiding, if not -- I'm not saying
10 anybody's breaking the law -- but the most respectful of
11 porkchops, they make the left turn. I've seen them do it.
12 And it's not very difficult, it really isn't. You just make
13 a bit of a wider left turn. So I fully expect that the
14 people in the development, if they want to get to Colesville
15 Road like I just said, get to Ellsworth, that's what they'll
16 do too.

17 And John Millson and the other residents of
18 Springvale Road will be living just to the left of that
19 porkchop, which I guess is west. As those people at night,
20 especially in SUVs, as they make that wide turn, those
21 headlights are going to sweep in a 90-degree arc, they'll go
22 across Charlie and Andrea's window, the people who will be
23 to the right of the porkchop, and they'll sweep across John
24 Millson's living room windows and past bedroom windows. So
25 I think that's something that if John was here, he would

1 tell you about and be concerned about.

2 So what I'm saying, I believe that in the end,
3 there's going to be a big increase in traffic, not just from
4 townhouse residents and their guests going both ways on
5 Springvale Road. And when you add in the cut-through
6 traffic, it means that, right now, what's a quiet little
7 street will be changed for the worse.

8 I want to add one other thing. There's a park at
9 the end of Springvale Road to the west, down and across from
10 Ellsworth. Now, on weekends, I see people walking down
11 Springvale Road to the park, pushing baby carriages, they
12 have little children with them, they have dogs on leashes
13 with them. And it's something I love because I get to meet
14 my neighbors, I get to pet their dogs. I really cherish it
15 because it's part of the community and I enjoy that. And I
16 fear that once all this traffic happens, that that is going
17 to change for the worse too.

18 MR. BROWN: Let's go on to the issue of two access
19 points, Mr. Gurwitz. Do you think that two access points,
20 one at Ellsworth and the other at Springvale, are necessary
21 to the efficacy of this project?

22 MR. GURWITZ: Not only do I think that they are
23 not necessary to the efficacy of the project, but I know
24 they EYA is under no legal obligation to have two access
25 routes onto this property.

1 MR. BROWN: And how do you know this?

2 MR. GURWITZ: On February 15th, 2012, I met with
3 Dr. Marie LaBaw, who's the head of the Fire Code Office of
4 the Montgomery County Fire Marshal's Office, to discuss
5 EYA's new schematic development plan. I want to talk
6 specifically about the road. Dr. LaBaw told me that she is
7 the official who has final say on emergency vehicle access
8 to developments such as this one. And she assured me, she
9 would approve the plan with only one access route.

10 Dr. LaBaw also directed me to section 5.1.5, table
11 5.1.5.1 of the National Fire Protection Association Standard
12 1141, standard for fire protection infrastructure for land
13 development in suburban and rural areas, which is referenced
14 in Montgomery County Executive Regulation 29-08AM, entitled
15 "Fire Safety Code Fire Department Apparatus, Access, and
16 Water Supply."

17 According to this table, the, quote, "required
18 number of access routes," unquote, for land development with
19 a number of households between zero and 100 is one. The
20 applicant is proposing 63 townhouses, a number that we hope
21 will decrease, but in no event, is expected to increase.
22 Therefore, it meets the standard, and we've entered standard
23 1141 as Exhibit 313.

24 Moreover, Montgomery County Code Section 49-31N
25 states, quote, "A tertiary residential street is a road

1 meant to provide direct access to a residential development
2 with 75 or fewer dwelling units," unquote. A tertiary
3 residential street must not be built unless the Planning
4 Board allows its use and the Board approves a preliminary
5 subdivision plan or site plan. That regulation is included
6 here as Exhibit 314S.

7 This is significant because that very section of
8 the code was cited by Damon Orobona, the former senior
9 analyst for the Montgomery County Planning Department's
10 Development Review Staff, in his July 22nd, 2011, memorandum
11 as specifically commented on the applicant's then schematic
12 development plan alternative road scenarios. And that
13 report is Exhibit 232. It's been entered.

14 On page 4 of that memo, Mr. Orobona analyzed the
15 applicant's scenario 3, the cul-de-sac option which depicts
16 a single access into the development from Ellsworth Drive
17 culminating in the cul-de-sac. Mr. Orobona stated that this
18 option could not work because there were 76 dwelling units
19 proposed for the site back then, and that violated section
20 49-31N, which limited tertiary roads to 75 dwelling units.
21 Well obviously, that objection is no longer valid as the
22 applicant has proposed only 63 units, and so they can have,
23 by law, a tertiary road.

24 The fact of the matter is that there is no legal
25 obstacle whatsoever preventing EYA from having only one

1 access road onto the property. And the problem of cut-
2 through traffic could be eliminated entirely if the plan was
3 revised to have a single access only from Ellsworth Drive.

4 MR. BROWN: Well, what about the claim that two
5 routes would be better for emergency vehicle access?

6 MR. GURWITZ: I would say that if one access route
7 is good enough for the National Fire Protection Association,
8 and good enough for the Montgomery County Fire Marshal's
9 Office, then it ought to be good enough for EYA.

10 And I hate to say it, but it seems to me that EYA
11 likes to pick and choose when it will follow the letter of
12 the law and when it will go above and beyond the law. On
13 Friday, during the discussion on trees with the arborist,
14 when Mr. Don Grove was talking about all the majestic and
15 beautiful trees that could be saved on the property if only
16 EYA were willing to do so, and when Jean Cavanaugh said
17 basically the same thing, Mr. Harris repeatedly pointed out
18 to both of them that EYA had the legal right to chop down
19 all those trees under the Forest Conservation law. But now,
20 even though they had the legal right to build only one
21 access route, suddenly they want to do more.

22 I need to put another slide up on the screen,
23 please. I would like to say that yesterday -- I'm sorry --
24 on Saturday, I took a walk to EYA's Cameron Hill townhouse
25 development, which is inside the Silver Spring central

1 business district, and I can confirm that there is only one
2 access point into the development of 57 townhouses. So if
3 that was good enough for EYA there, with 57 townhouses
4 packed tightly together, then why isn't one access route
5 good enough here?

6 However, and now I need to ask the hearing
7 examiner and Mr. Harris. Mr. Harris, you have this
8 exhibit --

9 MR. HARRIS: Yes.

10 MR. GURWITZ: -- showing --

11 MR. HARRIS: Yes.

12 MR. GURWITZ: -- showing the crescent parking lot?

13 MS. ROBESON: What is that exhibit?

14 MR. GURWITZ: I'm going to --

15 MR. HARRIS: 192.

16 MR. GURWITZ: 314J, I think is --

17 MR. HARRIS: It's multiple places.

18 MR. GURWITZ: I need to show you this. Judy
19 Christensen was referring to this in her slide show.

20 MS. ROBESON: Oh, the special exception for the
21 Chelsea School.

22 MR. GURWITZ: Yes.

23 MS. ROBESON: Okay.

24 MR. GURWITZ: I need to have this here.

25 MS. ROBESON: Well, I think I have one. What is

1 the exhibit that --

2 MR. GURWITZ: 314J.

3 MS. ROBESON: Okay. All right. I have that.

4 MR. GURWITZ: Okay. Mr. Harris?

5

6 MR. BROWN: He has it.

7 MR. GURWITZ: Okay. Okay?

8 MS. ROBESON: Yes.

9 MR. GURWITZ: Now, if EYA really wants to have two
10 access routes into the Chelsea property, then let them put
11 two access routes onto Ellsworth Drive. As we can see from
12 Exhibit 314J, there are two, there were two access routes
13 proposed for Ellsworth Drive in this crescent-shaped parking
14 lot. And if EYA wanted to, they could do something like
15 that and then have a road going from that into one single
16 road going somewhere into the neighborhood without exiting
17 onto Springvale Road. So you could have the two access
18 points if you prefer.

19 Also, I'd like to show you what's on the screen,
20 which is EYA's open space, which is, we have entered as
21 Exhibit 314R, like Ronald. This was a plan, or a diagram
22 rather, that they had prepared when they were trying to get
23 an RT-15. As you can see, as I hope you can see, it has
24 kind of an internal loop road. I know it exits onto
25 Pershing Drive, but nevertheless, if you ignore the Pershing

1 Drive exit, they kind of have a loop. And if they really
2 wanted to have two access points, they could just continue
3 the second leg of that loop out to Ellsworth Drive.

4 So if they want to have two access points, they
5 can do so. But the thing is, EYA does not need to worry
6 about having two access points because, by law, they are
7 allowed to have only one access point onto Ellsworth Drive.
8 I'm sorry. Yes, onto Ellsworth Drive, to need to have only
9 one access point. They don't need to have two.

10 MR. BROWN: What kind of single access route could
11 EYA build if they wanted to go to a single access solution?

12 MR. GURWITZ: According to Montgomery County
13 Executive Regulation 29-08, Section 7, which we have entered
14 here as Exhibit 314U, a single access route could end in a
15 cul-de-sac or it could end in a T-shaped terminus. Either
16 one would be an acceptable solution.

17 MR. BROWN: Would there be a reduction in
18 connectivity? Isn't connectivity a prime value for the
19 transportation planners

20 MR. GURWITZ: I know that we all think
21 connectivity is good, but connectivity doesn't have to be
22 vehicular, car connectivity. You can have connectivity with
23 walking paths, pedestrian paths, and you can have
24 connectivity with bike paths. And I would just like to
25 remind everybody that EYA's motto, which they are proud of,

1 is "life within walking distance." And so we can have
2 connectivity with pedestrian paths and bicycle paths.

3 I also want to say that it bothers me that EYA
4 told us on Friday, Mr. Kabatt said that if Seven Oaks
5 Evanswood residents were to drive or walk onto the internal
6 road, we would be guilty of trespassing. So I would ask
7 what kind of connectivity is it when, if you go onto the
8 road that's connected to you, all of a sudden, it's the
9 crime of trespass? I don't see that as connectivity; I see
10 it as something else, but it's not connectivity in my
11 opinion.

12 MR. BROWN: Getting back to the density point as
13 it relates to traffic movement. Do you see a connection
14 between traffic concerns and parking on the one hand, and
15 density on the other?

16 MR. GURWITZ: I do. And I can speak from the
17 personal experience of myself and my neighbor, because both
18 of our garages are right next to each other. Our driveways
19 adjoin each other. We don't park in our garages. We use
20 our garages for storage. And we have single family detached
21 homes, and we use our parking, our garages for storage; we
22 park in our driveways. And I fully expect that the
23 townhouse residents will devote at least one of their
24 garages to storage.

25 So if they have two cars, which is quite possible,

1 and if they have guests, and I know that there's going to be
2 parking on the internal road, I just think that the higher
3 density you have inside the development, the greater
4 likelihood that there will be spillover parking into my
5 neighborhood. And Francoise Carrier did point out, in the
6 May 19th, 2011, Planning Board hearing, that spillover
7 parking is a recipe for friction between residents of an
8 area.

9 MR. BROWN: Any other comments about your
10 preference and the community's preference for a single
11 access road?

12 MR. GURWITZ: Yes. Excuse me. I believe I've
13 already, hopefully, made it clear that, by law, EYA is
14 allowed to have only one access route into the development,
15 and that route can and should be off of Ellsworth Drive.
16 This is a choice that EYA can make, and I would ask the
17 hearing examiner to bear in mind that I used the word
18 "choice" deliberately.

19 It's no secret how I feel about a single access
20 route into the neighborhood. And I think it's fair to say
21 that many of the opponents, if not all of the opponents,
22 prefer a single access route off of Ellsworth Drive onto the
23 property. Those are those opponents.

24 I would like to name a few more people who have
25 testified, either before the Planning Board or before the

1 zoning hearing examiner, that the Chelsea Court townhouse
2 development could work with a single access route. Those
3 people are Bob Youngentob, the president of EYA; Miguel
4 Iraola, EYA's land use expert; and Robert Harris, EYA's
5 attorney. I will explain further.

6
7 From the very beginning, when EYA first met SOECA,
8 they assured us that they would not build an access road
9 onto Springvale Road because they heard our opposition.
10 During the May 19th, 2011, hearing before the Planning
11 Board, the applicant made repeated references to its, quote,
12 "commitment," and quote, "promise" not to put a road onto
13 Springvale Road. And it made these references even after
14 being informed by the Board that it might not be allowed to
15 put a road out onto Pershing Drive due to concerns over the
16 historic property. It was at this hearing that Mr. Harris
17 said, quote, "The site would function by access only to
18 Ellsworth," unquote.

19 Now, I mentioned earlier that the cul-de-sac
20 option that was reviewed by Damon Orobona was done so in
21 relation to the tertiary road. But at this point, we need
22 to note how Mr. Orobona ended up with viewing a cul-de-sac
23 option in the first place. And to do so, we need to return
24 to the hearing that took place in this very room on July
25 18th, 2011.

1 Mr. Miguel Iraola testified that day as EYA's land
2 use expert. He introduced Exhibit 210, which contains
3 sketches depicting six different alignment options for the
4 internal road. He referred to the internal road as Street
5 A. The second option was a cul-de-sac from Ellsworth Drive.
6 On direct examination regarding these six options, Mr.
7 Harris asked, quote, "Mr. Iraola, in your opinion as a
8 planner, do you believe that one or more of these is
9 approvable," end quote. Mr. Iraola responded, quote,
10 "They're all essentially yes, I do believe that any one of
11 these could be approvable," end quote.

12 The hearing examiner then asked Mr. Iraola if any
13 of the six options was, quote, "truly feasible." Mr. Iraola
14 responded, quote, "I think they're all physically feasible."

15 Mr. Harris then asked, "But do you believe they
16 are approvable, a preliminary plan and site plan as well."
17 Mr. Iraola answered, "Yes."

18 Next, it was Mr. Youngentob's turn to testify
19 about the six road options. The first thing he said was,
20 quote, "Every one of these plans really reflects the same
21 compatibility elements of the original plan with some minor
22 variations as it relates to circulation." He then said,
23 quote, "And so what we did in this particular drawing was we
24 created a 90-foot cul-de-sac which meets the Fire Department
25 turnaround radius at the end of Street A. It's completely

1 outside the existing historic easement and provides access
2 to all the units." So far, so good.

3 Mr. Youngentob then turned his attention to the
4 fifth alignment option. That's one that depicted an access
5 road onto Springvale Road, right across from my house, by
6 the look of it. Mr. Youngentob knew how much neighborhood
7 opposition there was to this option. He singled out John
8 Millson, who lives two doors down from me on Springvale, and
9 said the following. Quote, "This is the one I know gives
10 Mr. Millson heartburn," unquote. If John was here, he would
11 probably say it still does. However, Mr. Youngentob
12 reassured Mr. Millson by saying, quote, "And so I am happy,
13 you know, to say to Mr. Millson that this would be our last
14 choice." Our last choice.

15 A few minutes ago, I deliberately used the word
16 "choice" when referring to EYA's ability to have only one
17 access point onto the property. I would respectfully
18 suggest to EYA that there is no compelling reason why what
19 used to be their last choice has now become their first
20 choice. There are no legal obstacles standing in their way.
21 Any concerns about connectivity can be addressed by
22 providing pedestrian and bike paths into the development.
23 If EYA considers a cul-de-sac to be too old-fashioned, then
24 they can build a T-shaped terminus or something else. That
25 is up to them and their designers. But the point is, they

1 can do it if they want to.

2 EYA has said that building a cul-de-sac would be
3 difficult because of grading issues and the need for a
4 retaining wall. But they were prepared to build a cul-de-
5 sac under their old plan. Moreover, if EYA can build a road
6 out across the property from Ellsworth Drive, across the
7 property to Springvale Road, and if they can build
8 townhouses along that route, then they should be able to put
9 a round cul-de-sac at one end too. I understand that making
10 a cul-de-sac or perhaps a T-shaped terminus would require
11 building a few less townhouses. But EYA made a promise to
12 our neighborhood that they would not put a road onto
13 Springvale, and if keeping that promise means having a few
14 less townhouses, then they ought to do it.

15 In conclusion, I believe a road onto Springvale is
16 a terrible idea; it always has been and it always will be.
17 The hearing examiner should deny the new plan and direct the
18 applicant to eliminate the road onto Springvale, and
19 instead, have a single access onto Ellsworth.

20 MR. BROWN: Any concluding thoughts?

21 MR. GURWITZ: In conclusion, I'd like to say, I
22 believe the new schematic development plan is woefully
23 inadequate. It fails to address the remand with all its
24 concerns regarding massing and the alignment of the internal
25 road. And the townhouse development that results from it

1 would be utterly incompatible with the long-established
2 surrounding community of R-60 single family detached homes.
3 My neighborhood of Seven Oaks Evanswood deserves better.
4 For these reasons, I urge that the application be denied.

5 MS. ROBESON: Thank you. No further questions,
6 Mr. Brown?

7
8 MR. BROWN: That's it.

9 MS. ROBESON: Mr. Harris?

10 MR. HARRIS: Mr. Gurwitz, this model, looking at
11 the model, would you describe those as barracks?

12 MS. ROBESON: Why don't you turn it toward him
13 because you're looking at the --

14 MR. GURWITZ: I would -- no, because first of all,
15 it does have the wall behind it. But if they are barracks,
16 they are barracks under a very minor nature.

17 MR. HARRIS: The stormwater management plan, that
18 was a preliminary plan, you're aware of that?

19 MR. GURWITZ: Mr. Harris, I've already said I'm
20 not a stormwater expert. If it was a preliminary plan, I
21 accept that. I don't feel qualified to discuss stormwater
22 beyond what I've already testified to.

23 MR. HARRIS: So if we testify that any issues
24 there can be addressed, and would be addressed, to the
25 approval process, you have nothing to conflict with that

1 statement?

2 MR. GURWITZ: I'm not qualified to answer that.
3 I'm sorry.

4 MR. HARRIS: Okay. And you suggested that
5 possibly reduced density would help to address the issues in
6 that stormwater management plan. Can you explain that?

7 MR. GURWITZ: I'm just going by common sense. I
8 would say that the more trees you have, the more grass you
9 have, the fewer, the less asphalt you have, the fewer houses
10 you have, the less stormwater. That's the most I can say on
11 that subject.

12 MR. HARRIS: But those weren't the comments that
13 were in the letter from TPS, were they?

14 MR. GURWITZ: I cannot recall those comments.

15 MR. HARRIS: Okay. And in any respect, in order
16 to build this, we have to get the approval, or the project
17 would not go forward, you're aware of that?

18 MR. GURWITZ: I'm not aware of that.

19 MR. HARRIS: Okay. Do you obey the signs in your
20 neighborhood?

21 MR. GURWITZ: Yes, I do.

22 MR. HARRIS: And would you obey the signs that we
23 would put up at this project that were discussed before?

24 MR. GURWITZ: I believe I would.

25 MR. HARRIS: And the Attorney General opinion that

1 you cite, that had nothing to do with signage, did it?

2 MR. GURWITZ: It did not, correct.

3 MR. HARRIS: And in fact, what it said was that
4 they could not require people to have driver's licenses on
5 private property?

6 MR. GURWITZ: I believe if you read the opinion is
7 a whole, you can draw a legal conclusion that the police
8 could not enforce traffic control signs erected on private
9 property.

10 MR. HARRIS: Doesn't that conflict with Section
11 31-2 of the Montgomery County Code?

12 MR. GURWITZ: Excuse me. As I said, if the county
13 executive issues an executive order, then the police would
14 have power to enforce those signs, but that's not guaranteed
15 to happen.

16 MR. HARRIS: And if we were to ask the county
17 executive to issue an executive order to allow policing of
18 those signs, you have no reason to believe he'd deny it, do
19 you?

20 MR. GURWITZ: I have no idea what he would do.

21 MR. HARRIS: Isn't the goal in the county to stop
22 cut-through traffic?

23 MR. GURWITZ: Mr. Harris, I have no idea what the
24 county executive would do in this particular case.

25 MR. HARRIS: Is the goal to stop cut-through

1 traffic in the community?

2 MR. GURWITZ: Hopefully.

3 MR. HARRIS: And has the county already adopted a
4 policy to stop that?

5 MR. GURWITZ: Are you referring to the master
6 plan?

7 MR. HARRIS: No, I'm referring to the signage and
8 the physical restrictions in your neighborhood.

9 MR. GURWITZ: In my neighborhood, they did do
10 that, yes.

11 MR. HARRIS: Okay. So you have no reason to
12 believe that they wouldn't continue that policy by enforcing
13 signs here if we asked them to.

14 MR. GURWITZ: I believe I've already answered that
15 question.

16 MR. HARRIS: Okay. Couldn't someone who lives in
17 this townhouse community on private Street A recognize that
18 there was a strong likelihood of somebody being a cut-
19 through traffic, cut-through person if they came in at
20 Springvale, I mean, at Ellsworth and then made the left turn
21 there and went out?

22 MR. GURWITZ: I'm sorry. Please repeat the
23 question.

24 MR. HARRIS: Okay. Suppose, couldn't unit owners
25 in this community observe cars coming in Ellsworth and

1 exiting directly at Pershing, or at Springvale, and know
2 that they were cutting through, if that ever happened?

3 MR. GURWITZ: It is possible.

4 MR. HARRIS: And if they were cutting through and
5 the sign said, "No Trespassing," they would be guilty of
6 trespassing, is that correct?

7 MR. GURWITZ: I'm actually not familiar enough
8 with the criminal law regarding trespassing to know whether
9 or not that's the case.

10 MR. HARRIS: All right. So if there's testimony
11 later that the trespass laws would allow those people to be
12 arrested, fined \$500, and put in jail for up to a year, you
13 have nothing to conflict with that?

14 MR. GURWITZ: With all due respect, as a fellow
15 attorney, I'd like to look at the law myself.

16 MR. HARRIS: Okay. Well, then we'll show it to
17 you.

18 MS. ROBESON: Well, you know what? It's a matter
19 of statutory interpretation, and I don't get the point of
20 this, Mr. Harris.

21 MR. HARRIS: They've had extensive testimony that
22 private traffic restrictions can't be enforced. I think
23 they're wrong. The code says they're wrong. Even you said
24 they were wrong.

25 MR. GURWITZ: That's not entirely correct.

1 MS. ROBESON: Well, he said that if you impose, if
2 you get an executive order, you can --

3 MR. HARRIS: That's for motor vehicle violations.
4 I'm talking about trespass. I don't need anybody's approval
5 for me to --

6 MS. ROBESON: Wait. Wait. Answer.

7 MR. HARRIS: Okay.

8 MS. ROBESON: What is the benefit of him reading
9 the law?

10 MR. HARRIS: Because he opined that you could not
11 enforce the law to stop somebody from coming here. He
12 started, he referenced the Attorney General opinion, not me.

13 MS. ROBESON: Okay. Okay. I don't care who
14 started it. I just -- all right.

15 MR. HARRIS: I mean, if he's --

16 MS. ROBESON: Go ahead and ask it.

17 MR. HARRIS: If Mr. Brown's willing to stipulate
18 that the law says what the law says here --

19 MS. ROBESON: Well, what does the --

20 MR. HARRIS: -- I'm fine with that.

21 MS. ROBESON: Well, is that in the record?

22 MR. HARRIS: It's Section 6-402 of the Maryland
23 Criminal Code.

24 MS. ROBESON: Yes. Well, you know, can you read
25 it on the --

1 MR. HARRIS: I can --

2 MS. ROBESON: No.

3 MR. HARRIS: Oh.

4 MS. ROBESON: Rather than getting it in, into on
5 cross-examination, can you just deal with it in your
6 rebuttal?

7 MR. HARRIS: We can. That's fine.

8 MS. ROBESON: I think that's a better way.

9 MR. HARRIS: That's fine. I just, if he knew
10 something different than this, I wanted to get it out now
11 while he's on the stand.

12 MS. ROBESON: Okay. Do you know something
13 different than that law?

14 MR. GURWITZ: I was not testifying to the
15 existence of a trespass law; I was testifying about the
16 enforcement of signs on private property. And that was the
17 scope of my testimony.

18 MR. HARRIS: Fine. Okay. And we've covered that.
19 You mentioned that, I think your words were that "conjecture
20 and speculation can't be relied upon." Do you remember
21 saying that?

22 MR. GURWITZ: Yes, I do.

23 MR. HARRIS: And isn't your testimony about cut-
24 through traffic conjecture and speculation?

25 MR. GURWITZ: It could be, yes. But I would say

1 that based on the experience of my neighborhood, which felt
2 it necessary to have traffic restrictions put in place, I
3 think there's some evidence to support that I said.

4 MR. HARRIS: And those traffic restrictions are
5 working very well today?

6 MR. GURWITZ: From what I've heard, it's much
7 better now than it used to be.

8
9 MR. HARRIS: You were talking about travel
10 patterns of somebody going out to Dale Drive and coming out
11 of Springvale access. Wouldn't you assume that your
12 neighbors on Pershing Drive, a block north of here, would do
13 exactly that, would go up Pershing to Dale?

14 MR. GURWITZ: You know, I don't know what they do
15 to get to Dale.

16 MR. HARRIS: If they lived a block from Dale, are
17 they likely to come all the way back down Pershing and take
18 a right on Springvale and go your way?

19 MR. GURWITZ: That depends on the individual. Are
20 they comfortable making that left turn, or would they prefer
21 to get to Dale via Ellsworth?

22 MR. HARRIS: And if there were ever a problem
23 accessing Dale at Pershing, aren't there other streets in
24 between Springvale and Dale on which they could take a left
25 and go over to Ellsworth?

1 MR. GURWITZ: Cutting through the neighborhood is
2 possible.

3 MR. HARRIS: They're already in the neighborhood.

4 MR. GURWITZ: People can cut through, people can
5 go through side streets, and perhaps they do. I don't want
6 to speculate on what other people. I can only tell you my
7 personal feeling about the intersection at Dale and
8 Pershing.

9 MR. HARRIS: So assuming someone was like you, a
10 law-abiding driver, and the sign said, "No Left" on
11 Springvale, and the porkchop, or channelization there,
12 required them to go right, wouldn't you agree, there's a
13 high likelihood that they would then go up Pershing and get
14 onto Dale either at Dale or by one of the other streets,
15 rather than taking an illegal left on Springvale?

16 MR. GURWITZ: Based on the experience at my
17 parents' retirement community with all these retired
18 citizens, I've seen many people make that big wide left
19 turn, and so I expect that if it happens there, it would
20 happen here.

21 MR. HARRIS: You wouldn't do it though?

22 MR. GURWITZ: Is it a criminal offense?

23 MR. HARRIS: I believe it is. You're taking a
24 left --

25 MS. ROBESON: Are you going to take the Fifth?

1 MR. HARRIS: Yes.

2 MR. GURWITZ: I will take the Fifth on this
3 question. Although, Mr. Harris, I should point out, I won't
4 be coming from the development. I live on Springvale
5 already.

6 MR. HARRIS: That's correct. But if you lived, if
7 we were fortunate enough for you to buy one of these
8 townhouses, and you lived here?

9 MR. GURWITZ: Asked and answered.

10 MR. HARRIS: Channelization measures and turn
11 restrictions like that are used in a number of places
12 throughout the county for this purpose, aren't they?

13 MR. GURWITZ: I wouldn't know.

14 MR. HARRIS: You talked about people walking to
15 the park. Are you aware that this project plans to build a
16 sidewalk along Springvale where none exists today?

17 MR. GURWITZ: Actually, I don't know for certain
18 that's going to happen. If you say it is, I can accept
19 that.

20 MR. HARRIS: Isn't it shown on the schematic
21 development plan up there?

22 MR. GURWITZ: I'm sorry?

23 MR. HARRIS: Both of them. Isn't there a sidewalk
24 shown on both the old and the new schematic development plan
25 along Springvale Road?

1 MR. GURWITZ: Is that a sidewalk?

2 MR. HARRIS: And as well, along Pershing and along
3 Ellsworth, where no sidewalks exist.

4 MR. GURWITZ: Is that a question?

5 MR. HARRIS: Yes. Isn't there a sidewalk shown on
6 those streets?

7 MR. GURWITZ: Looking at it from here, I -- I will
8 take your word for it, Mr. Harris, that they're, that
9 depicts sidewalks.

10 MR. HARRIS: Okay. I, too, spoke with Marie LaBaw
11 about access, and she informed me that she prefers two. She
12 didn't tell you she didn't prefer two points of access, did
13 she? She just told you that you don't need them by code.

14 MR. GURWITZ: To repeat, Ms. LaBaw told me she
15 would approve the development with one access code.

16 MR. HARRIS: Do you know whether she would prefer
17 two points of access?

18 MR. GURWITZ: I'm not going to speculate.

19 MR. HARRIS: So if we have testimony that she said
20 she would prefer two, you have nothing to, that would
21 conflict with that?

22 MR. GURWITZ: No.

23 MR. HARRIS: And you're aware that both the
24 Planning Board and the planning staff prefer two points of
25 access?

1 MR. GURWITZ: I believe that's the case. I can't
2 say for certain.

3 MR. HARRIS: The Chelsea School plan about which
4 you testified with respect to traffic access, was that
5 configuration of access acceptable to you?

6 MS. ROBESON: You mean the special exception --

7 MR. HARRIS: Yes, ma'am.

8 MS. ROBESON: -- site plan?

9 MR. HARRIS: Yes.

10 MR. GURWITZ: It looks acceptable.

11 MR. HARRIS: It was. That had a point of access
12 on Pershing and a point of access on Ellsworth, so you could
13 cut through the property, couldn't you?

14 MR. GURWITZ: I don't see that, Mr. Harris.

15 MR. HARRIS: Well, take a look at it. It looks
16 like that to me.

17 MR. GURWITZ: I don't see that, Mr. Harris. I'm
18 sorry.

19 MR. HARRIS: Okay.

20 MR. GURWITZ: From that. I can tell you, I see
21 the two access points --

22 MR. HARRIS: Isn't this a driveway coming through
23 here to this parking area, and continuing all the way over
24 there?

25 MR. GURWITZ: Allow me to say this, Mr. Harris. I

1 don't know if that's the case. When I say, "it's
2 acceptable," I'm talking about the two access points onto
3 Ellsworth Drive, and I use that as an example of what EYA
4 could do if you wanted to have two access points.

5 MR. HARRIS: I understand that, but this --

6 MR. GURWITZ: And that was the point of my
7 testimony.

8 MR. HARRIS: I understand, but I'm asking you,
9 doesn't this have points of access on both Pershing and on
10 Ellsworth?

11 MR. GURWITZ: It is impossible for me to tell from
12 that picture whether or not it does.

13 MR. HARRIS: You can't tell from that picture
14 whether it has points of access on two roads?

15 MR. GURWITZ: I have answered your question.

16 MS. ROBESON: Mr. Harris --

17 MR. HARRIS: Okay. And does it have an access
18 point to Pershing Drive?

19 MR. GURWITZ: Yes.

20 MR. HARRIS: And is there parking along that road
21 there, that access road?

22 MR. GURWITZ: I don't know that I see the
23 relevance of your question, but I can't tell whether it has
24 parking. Of course, that was not the point of my using that
25 exhibit.

1 MR. HARRIS: And what would stop somebody from
2 coming out of this, the parking driveway on the Ellsworth
3 side and taking a right?

4 MR. GURWITZ: I expect, because I was thinking
5 that too, the "Do Not Enter" sign that prohibits you from
6 continuing north on Ellsworth, I expect that that north
7 entrance is south of that "Do Not Enter" sign. If it
8 wasn't, then I would not accept that.

9 MR. HARRIS: Couldn't that, if somebody coming out
10 of that parking lot --

11 MS. ROBESON: Okay. Mr. Harris --

12 MR. HARRIS: -- take a right even if it's a "Do
13 Not Enter"?

14 MS. ROBESON: -- he already testified that he -- I
15 don't want to get into the Chelsea School special exception.
16 He was using it as an example of the type of driveway
17 access. I don't want to pick the Chelsea School special
18 exception plan apart.

19 MR. HARRIS: I'm not trying to pick it apart. To
20 the contrary. I'm holding it out as an example of where
21 there was access to two points, two streets that are not
22 traffic restricted, and would allow the same type of traffic
23 through the neighborhood that we're talking about.

24 MS. ROBESON: But he already said he's not
25 endorsing the Chelsea School plan --

1 MR. HARRIS: Okay.

2 MS. ROBESON: -- per se. What he's saying is, I
3 don't think it helps you much.

4 MR. HARRIS: Okay.

5 MR. GURWITZ: I'd like to also add to your, to
6 that ruling, the fact that there's no evidence in the record
7 that this was ever actually physically accomplished on the
8 site.

9 MR. HARRIS: Well, then maybe this cul-de-sac
10 thing --

11 MS. ROBESON: Okay.

12 MR. HARRIS: -- wasn't feasible too. That's --

13 MS. ROBESON: I don't think it's getting us
14 anywhere.

15 MR. HARRIS: Mr. Gurwitz, if you were going to the
16 Whole Foods store by car, what would your travel route be?

17 MR. GURWITZ: My travel route would be to go down
18 Pershing and make a right to Wayne, and then from Wayne to
19 get to Whole Foods.

20 MR. HARRIS: And a similar answer, but with a left
21 on Wayne if you were going to, say, Flower Avenue, Takoma
22 Park area?

23 MR. GURWITZ: That's probably the way to go. I
24 could count on one hand the number of times I've done that.

25 MR. HARRIS: And the reason you would go that way

1 rather than going down Ellsworth is that it's considerably
2 more convenient for somebody at Springvale Road to go that
3 route than to go down to Cedar, out Cedar Spring, wait at a
4 light at Colesville, go down Colesville, wait at another
5 light at Fenton, and then go through that way?

6 MR. GURWITZ: I see where you're going with this,
7 and I'd like to say that most of the time, I do my shopping
8 at Whole Foods on the way home, as I'm walking home from the
9 Metro. Almost all of my food shopping at Whole Foods is
10 done by foot. Now, those few times I might want to take the
11 car, perhaps it'll be a little more inconvenient, and I
12 expect that that's a fair thing for the townhouse
13 development residents too.

14 MR. HARRIS: Are you aware that the schematic
15 development plan has increased the number of offsite parking
16 spaces to 18 now?

17 MR. GURWITZ: From?

18 MR. HARRIS: From, I don't remember the number.

19 MS. ROBESON: When you say "offsite," you mean --

20 MR. HARRIS: The street parking -- I'm sorry --

21 MS. ROBESON: On-street parking.

22 MR. HARRIS: -- the on-street parking. My
23 mistake, yes, thank you.

24 MS. ROBESON: Okay.

25 MR. HARRIS: The on-street parking is now 18

1 spaces?

2 MR. GURWITZ: I'll take your word for it.

3 MR. HARRIS: Okay. And you did hear testimony
4 earlier at the first round of hearings that EYA's HOA
5 documents require people to park their cars in their
6 garages?

7 MR. GURWITZ: You're going to force people to park
8 their cars in their garages?

9 MR. HARRIS: That was the testimony before. Do
10 you remember that?

11 MR. GURWITZ: They won't be able to use their
12 garages for storage instead?

13 MR. HARRIS: Only so long as they can keep their
14 car there.

15 MR. GURWITZ: Fascinating.

16 MR. HARRIS: You don't have that requirement in
17 your house, I know.

18 MR. GURWITZ: No.

19 MR. HARRIS: No. You also don't have any guest
20 parking on your property other than your driveway, right?

21 MR. GURWITZ: That's correct.

22 MR. HARRIS: Your guests would park on the street,
23 on Springvale.

24 MR. GURWITZ: If they can find spots, yes.

25 MR. HARRIS: You talked a lot about the single

1 point of access, and you're not suggesting that we've ever
2 proposed that there be only one point of access here, are
3 you?

4 MR. GURWITZ: One of the six alternatives that you
5 submitted as an exhibit on July 18th, 2011, did depict a
6 single access point.

7 MR. HARRIS: But it wasn't our proposal, was it?
8 The SDP on the table wasn't proposing that.

9 MR. GURWITZ: The original SDP had an access onto
10 Ellsworth and an access onto Pershing. And then you
11 submitted six alternatives.

12 MR. HARRIS: You mentioned that the neighborhood
13 was promised that there would be no access to Springvale. I
14 remember those discussions, but would you agree with me that
15 the discussion was more of a quid pro quo within which the
16 applicant was attempting to get community support, and was
17 willing to agree to not have an access point on Springvale?

18 MR. GURWITZ: I'm not going to read EYA's mind.
19 I'm telling you that you made us promises, and you used the
20 word "promise" and "commitment."

21 MR. HARRIS: In any respect, the plan, at that
22 time, then showed an access point to Pershing, which the
23 community flatly opposed, do you remember that?

24 UNIDENTIFIED SPEAKER: That's not for you, Bob.

25 MR. HARRIS: No.

1 MR. GURWITZ: I think there was mixed community
2 reaction to that.

3 MR. HARRIS: Okay.

4 MR. GURWITZ: Fortunately, it did not lead to cut-
5 through traffic.

6 MR. HARRIS: SOECA opposed that access to
7 Pershing, didn't they?

8 MR. GURWITZ: You know, Bob, since I didn't come
9 to testify about that, honestly, I would rather review all
10 the record before I answer that.

11 MR. HARRIS: That's fair enough. The fact that a
12 cul-de-sac might be approvable doesn't mean it's necessarily
13 desirable, does it?

14 MR. GURWITZ: It depends on who you ask. I think
15 it's highly desirable.

16 MR. HARRIS: Fair enough. I have nothing further.
17 Thank you.

18 MS. ROBESON: Mr. Brown?

19 MR. BROWN: No followup.

20 MS. ROBESON: Okay. Thank you, Mr. Gurwitz.

21 MR. GURWITZ: Thank you.

22 MS. ROBESON: And your next witness?

23 MR. BROWN: Mr. Doggett.

24 MS. ROBESON: Mr. Doggett. Okay. I think,
25 before, I anticipate Mr. Doggett to take a little bit, so

1 we're going to take a five-minute break before Mr. Doggett
2 appears. You're still sworn.

3 MR. DOGGETT: Yes, the first time.

4 MS. ROBESON: All right. We'll be back in five
5 minutes.

6 (Whereupon, at 3:46 p.m., a brief recess was
7 taken.)

8 MS. ROBESON: Back on the record. And Mr.
9 Doggett, I know it's in the record, but do you just want to
10 state your name and business address, please?

11 MR. DOGGETT: Yes. My name is Kenneth Doggett.
12 My address is 2702 36th Street, Northwest, that's
13 Washington, D.C. 20007.

14 MS. ROBESON: Thank you. Mr. Brown?

15 MR. BROWN: Mr. Doggett, I believe you've
16 qualified in this case as an expert in land planning and
17 urban design, is that the recollection?

18 MS. ROBESON: Yes.

19 MR. HARRIS: Yes.

20 MS. ROBESON: Oh, were you asking him?

21 MR. BROWN: Yes.

22 MS. ROBESON: Oh.

23 MR. DOGGETT: Yes. Both of --

24 MR. HARRIS: We all agree.

25 MR. DOGGETT: Yes.

1 MS. ROBESON: Well, we stipulate. Okay.

2 MR. BROWN: That's where we start, at points of
3 disagreement.

4 MS. ROBESON: Okay.

5 MR. DOGGETT: Okay.

6 MR. BROWN: All right. Mr. Doggett --

7 MR. DOGGETT: Could I act on the points of
8 disagreement in terms of terminology that's going to come
9 up? Looking at the model, to me, a square or courtyard is
10 four sides, okay, of a building, or group of buildings. A
11 mews is from London where you have copious mews, and is the
12 vehicular street where the carriages were usually put, then
13 the cars, now they're rather nice houses, expensive houses.
14 But I, when you say "mews," and this is actually, I think,
15 if I got the architect here too, he will refer, the
16 technical term in planning, still, is the mews being the
17 vehicular street. So that we know what they're talking
18 about, okay?

19 MS. ROBESON: Okay. Well, what is the landscape
20 down there if it has no --

21 MR. DOGGETT: I don't think it has a particular
22 name. It's a channel of landscaping. It has no particular
23 name --

24 MS. ROBESON: Okay.

25 MR. DOGGETT: -- as such, I don't think. A

1 landscaped between the --

2 MR. BROWN: The name "court," just, I don't mean
3 to interrupt --

4 MR. DOGGETT: Yes?

5 MR. HARRIS: -- but the name "court" was what we
6 were calling it, Chelsea Court.

7 MR. DOGGETT: Yeah, but "court" is normally four -
8 - okay. I'll go with "court" if you want, then.

9 MS. ROBESON: Generically, not technically --
10 well, whatever. Go ahead. Go ahead, Mr. Brown.

11 MR. BROWN: Mr. Doggett, I want to take you back,
12 just for a moment, to the past. You will recall last time
13 you were here to testify -- would you look up here just one
14 second?

15 MR. DOGGETT: Yes.

16 MR. BROWN: This was the plan that you testified
17 about. This was the plan, the RT-50 plan that was on the
18 table.

19 MR. DOGGETT: Yes.

20 MR. BROWN: And you told us about the problems
21 that you envisioned for this plan, and you testified,
22 referring to a sketch plan that showed how the property
23 could be laid out in R-60 zoning and developed without any
24 change in the zoning.

25 MR. DOGGETT: Yes.

1 MR. BROWN: Remember all that? Today, we're going
2 to basically do the same thing, but starting from this plan
3 on the bottom half of this exhibit. I would like you to
4 talk about any problems you see with this particular plan,
5 and you're going to, as I understand it, to present an
6 alternative sketch version of something that alleviates some
7 of those problems.

8 MR. DOGGETT: Yes. I have --

9 MR. BROWN: That's the focus of your testimony?

10 MR. DOGGETT: Yes. I'd like to say that, as I was
11 more or less an invalid during this, in coming in very late,
12 I got my partner to do the sketches, so one or two things,
13 they can be added or deducted. For example, I haven't shown
14 another row of trees north of the southern portion of
15 houses.

16 MR. BROWN: Let's get --

17 MR. DOGGETT: Yes.

18 MR. BROWN: Let's talk first about the problems
19 that you see --

20 MR. DOGGETT: Okay.

21 MR. BROWN: -- with their RT-12.5 proposal.

22 MR. DOGGETT: Okay. The first problem is the
23 historic property, which I think has been more or less
24 pointed out, that it should be 1.4. I've done, I, for the
25 last few years I've done a lot of work for the British

1 foreign office with historic buildings. I can think of no
2 case where the land has been decreased in size -- and in
3 Fairfax County, I've done it -- it's never the historic
4 houses, always the historic property mentioned in the
5 Montgomery manuals.

6 The applicant has suggested that it's beneficial
7 to go further north -- I'm calling it north, south, west,
8 and east. I really disagree with that. I remember Mr.
9 Harris making great points in getting me to say that the
10 back of the house pointing north was the back of the house.
11 The setting, at the moment, of the proposal pushes the
12 townhouses one row forward, what I have shown on the sketch
13 to the left. That is not beneficial --

14 MS. ROBESON: Is that in -- I'm sorry -- is that
15 in the record, Mr. Brown? I just can't remember what
16 exhibit. Just so the record knows when he says the sketch
17 to the left.

18 MR. BROWN: This is Exhibit 314V.

19 MS. ROBESON: Okay. Thank you.

20 MR. HARRIS: V, as in Victor.

21 MR. BROWN: The one on, the one that I've put up
22 here is one that's to scale.

23 MS. ROBESON: Yes.

24 MR. BROWN: The one that is in the record is a
25 reduced size, but this one is to scale.

1 MS. ROBESON: Okay.

2 MR. DOGGETT: By retaining the, what I think is
3 the legitimate site size, you get the benefit of being
4 further back from the house. And the key view, in many
5 respects, is the view to the west and the south. You lose a
6 lot of that impact when you move everything to the east. I
7 think when you deduct the setbacks and the recommendations
8 from the two roads, and possibly the interior road, as
9 proposed, by the developer, by the applicant, there's not
10 much space left, to be quite honest, and if there is, so be
11 it. I think still to retain the 1.4 is the beneficial area
12 to have, as well as it seems to be the, if not the legal,
13 certainly the one that has ended up being recommended.

14 I came in at the end of the lady speaking this
15 morning, and her discussion was quite effective. That was
16 one element. One is restricted by the setbacks on
17 Ellsworthy (phonetic sp.), which means that you do lose some
18 spaces.

19 I then looked at the north and the south, and I
20 was very impressed by the arborist yesterday, sufficiently,
21 that, yesterday afternoon for about 15 minutes in the
22 pouring rain, I came from Washington and hobbled onto the
23 site, and had a look at some of the trees. And what I've
24 done, what I did do, on the plan here, and it seems to be
25 based on a plan that I saw that Bowman made, the civil

1 engineers who did the drawings here, of specimen trees. And
2 I tried as much as possible, and I had to sacrifice some,
3 otherwise you'd not get many houses in the area south of the
4 interior road, to keep those trees as much as possible, and
5 as near as I could, measuring to the, in the center of the
6 tree on each case.

7 I also noticed yesterday that by approving the
8 applicant's plan, you would eliminate two of the two finest
9 trees on the site which seem to be two very, very tall beech
10 trees. I'm not a tree specialist. They would go, because
11 the houses would be exactly there. It's not ideal, even
12 with my solution, but at least it's something that you, I
13 think, could save them.

14 So I then eliminated a row of houses from the
15 latest application on the south of the project, the houses
16 facing the houses on Cedar. I also eliminated the houses on
17 the north side facing Springvale. I see where the architect
18 came from in having a double row of trees, but it's an irony
19 in a way. A double row of trees, it actually goes against
20 what I would rather like seeing. You want to make this
21 acceptable to the houses on Springvale, and compatible with
22 those.

23 So I've suggested having this additional depth of
24 a house, and in that wider swath of green land, to have
25 informal planting of trees, not rows. Two rows would tell

1 you here, you're coming from single family, getting a very
2 different kind of development. If you develop it, develop
3 the trees sporadically and not regularly, it would tie into
4 the tree planting that you normally see on a single family
5 house, and in the gardens.

6 And Mr. Gursky (phonetic sp.) mentioned that his
7 house covered -- and he thought it was very similar, and
8 it's rather like our two in Washington -- about a third of
9 the acreage is the house, two-thirds is land, roughly on
10 that figure. So that is another reason for setting it
11 back, to make it more compatible, less massive. And I think
12 from both the south, by preserving the trees, setting it
13 back, and retaining the existing historic area, the 1.4, the
14 development becomes much more acceptable.

15 If I digress for a minute. I was reading a book
16 then I was looking at this last night, getting back, and
17 it's about a man that had his leg damaged in the Second
18 World War, he was a bomb specialist. And the first sentence
19 is, "My leg hurt all the time so they cut it off, now it
20 only hurts half the time." And I looked at this plan and I
21 thought, "Well, Mr. Harris, it hurts less but it still
22 hurts."

23 I think I would like, having done that, there are
24 other second thoughts after I gave this to Mr. Kamster
25 (phonetic sp.) to draw up in a very limited time, and I

1 could not actually get to my drawing board. I had a cast on
2 then, that was the thing. But I would probably, where the
3 narrow houses are, certainly along the top row, would
4 consider on the three rows, reducing the center house of the
5 narrow houses. I think with the four houses, you're okay.

6 I think that the -- I get into architecture here a
7 bit by not, not bringing myself -- I am an architect, but
8 I'm not bringing, really, the architectural thing in, but I
9 don't think this model depicts really what you see. You
10 will see through the trees, and you will see no cross-
11 housing. Your eye will go down the full length to the Cedar
12 Street boundary, in actual fact. You do see a lot of the
13 vision as one of the previous people mentioned. If you walk
14 down Springvale -- and I did last night -- and you can see
15 the tall building over beyond the tree thing. So that is
16 another consideration. I think that would help to break it
17 up, to keep the four, but make the smaller necessary. I
18 brought it down to 48, so that would bring it another three.

19 But the other thing is, whether you have a T, or
20 what you call a cul-de-sac, I'd call it a roundabout or a
21 circle, you would, as the applicant said last night, lose,
22 he said you would lose land in the, with a 90-foot radius,
23 diameter, would lose land on the school site, but you could
24 also lose three, I think three houses on the current site by
25 having that. And whether you wanted a T or a circle, which

1 I have not heard as being unpopular, in fact, I think it's
2 really being used more and more as a, you know, depressive
3 speed thing.

4 I think, in those ways, we end up with a green
5 space. I would assume, if one developed this, one would be
6 very sensitive, not try and cram two or three houses into
7 the northeast corner. But if they do, then it's up for them
8 to do it well. I still think the benefits of keeping the
9 1.4 is extremely important from the point of view of the
10 setting. If the site is there, the house was built to
11 advantage of that particular size and aspect. If the site
12 was there, if the house, site was there and the house was
13 put there, obviously, it was put in with that design in
14 view. It's canted this way and it looks towards that
15 particular spot, which is very important.

16 So you gain the depth of a row of houses and their
17 portions, and you also preserve some two, two best trees on
18 front the site, I think. I'm not an arborist, but they were
19 the two most impressive streets.

20 MR. BROWN: Mr. Doggett, the setback from the
21 single family homes on Cedar Street, is it different under
22 your plan than under their plan, under the EYA plan?

23 MR. DOGGETT: Yes, because it's one house
24 eliminated, so --

25 MR. BROWN: All along the bottom?

1 MR. DOGGETT: Yeah. So if you take the, from the
2 Ellsworthy site, if you saw four units on mine, they also
3 would have had five units. It would be an additional unit
4 on each of their rows.

5 MR. BROWN: And the same is true on the north side
6 along Springvale?

7 MR. DOGGETT: The north side, yes. They're
8 different. The south side is because, is dictated, I think,
9 by the trees, the preservation of the trees, which I think
10 should be saved. The north side is, by the definition of
11 how to make it more compatible, less massive looking, by
12 having an informal arrangement, and you needed that extra
13 length. And I think I showed on the original one, a sort of
14 trail going through that north area too.

15 The, it's a matter of taste whether you put -- the
16 citizens like the two end treatments of the houses
17 apparently, but it's a matter of taste whether you like the
18 frills added to the building or not. It's one architectural
19 view. I was, my school of architecture was in a Georgian
20 house. My first two jobs were in Georgian houses, which are
21 flat fronts with just the entry door, that defined, and the
22 windows proportioned beautifully. I prefer that kind of
23 architecture to the, to this, but that's not to say that's
24 not good. That's a personal opinion.

25 MR. BROWN: Are you talking about the, what Mr.

1 Iraola testified to was that the houses on the north side
2 facing Springvale would have real entrances facing
3 Springvale.

4 MR. DOGGETT: Yes.

5 MR. BROWN: Is that what you're talking about?

6 MR. DOGGETT: Yes. I'm --

7 MR. BROWN: As the choice between having them
8 facing on Springvale or facing on the mews, or whatever it's
9 called?

10 MR. DOGGETT: Yeah, on the landscape there. Yes,
11 that apparently was what the community seemed to like, but
12 it's, it doesn't worry me to have that happening, but it
13 means community saw it that way.

14 MR. BROWN: And if I understand correctly, you are
15 trading off the density of those, of that last row of
16 townhomes on the north side in exchange for greater open
17 space and green space facing Springvale.

18 MR. DOGGETT: Yeah, and the trees then do have an
19 urban design impact, you're not just preserving trees
20 because the trees are attractive. They have a design. And
21 at the back, the taller trees have an impact on, your
22 channeled housing look better with the tall trees as a
23 background. You'll be seeing many trees or few trees there.
24 It's, it becomes an urban design thing, as well as a
25 arborist preference.

1 MR. BROWN: I know this is not an, sort of an
2 engineered plan, but have you done any calculations on the,
3 on what the difference is, if any, on on-street parking for
4 this, with this plan?

5 MR. DOGETT: I have tried to stick with the
6 parking that we had there with, I think, on the interior
7 street, I show two stretches of parking there. And even on,
8 if we had put two at the end here, and I debated a lot
9 whether we needed two units there. I put three garages, as
10 I think the applicant shows.

11 MR. BROWN: Now, the applicant has, the
12 applicant's land use planners have, and the applicant itself
13 have testified that their plan has been responsive to the
14 density and massing concerns that were the basis for the
15 remand. Did you hear that testimony?

16 MR. DOGETT: Yes, yes.

17 MR. BROWN: Do you agree that their plan has been
18 at least somewhat responsive to those concerns?

19 MR. DOGETT: I think they're somewhat, but I
20 think so much more could have been done. And certainly, the
21 north and the south, and the retention of the 1.4 with the
22 circular or the T-shaped entry and single entry would be a
23 much better thing. We're talking about something like 42
24 units and so this is not a massive highway. Or 44.

25 MR. BROWN: One other point I wanted to, I wanted

1 you to address before I turn it over to Mr. Harris, to ask
2 you about it. You heard Mr. Gurwitz talk about a barracks
3 configuration.

4 MR. DOGGETT: Yes.

5 MR. BROWN: Do you believe that your plan is still
6 vulnerable to that particular criticism, or what --

7 MR. DOGGETT: Yeah.

8 MR. BROWN: -- do you think about that criticism?

9 MR. DOGGETT: Well, as you know, it's not up to us
10 to produce a plan; it's to suggest things. My suggestion,
11 by eliminating one of the houses, not only would I eliminate
12 the space there, but move the house forward about three or
13 four feet so you would get a break there.

14 MR. BROWN: An offset?

15 MR. DOGGETT: An offset. The space would have
16 planting in it. I know Charleston, South Carolina has this
17 a lot, having nice steps going down into, from one space to
18 another, an impediment -- but it's, it can be pleasant
19 looking. It can break up the massing. I don't see the, I
20 do not see the similarity or the relationship of this model
21 and what is either here or what the applicant has done. I'm
22 totally, I don't see it. I see the reason for the
23 architectural detail, if you want to go that way. And I
24 preferred going another way, but that's a matter of taste.
25 But the actual grouping and the massing, I don't see. This

1 is a much smaller courtyard, if we want to call it that, an
2 open-ended courtyard.

3 MR. BROWN: Any other thoughts, Mr. Doggett, in
4 light of the testimony which you heard on Friday or today?

5 MR. DOGGETT: What I heard this morning firmly
6 convinced me of the right in keeping the full size of the
7 actual 1.4, whether land changes hands. I think, sort of, a
8 month ago, somebody came to me and said that the school
9 opposite UDC -- I forget -- but the primary school committed
10 itself to keeping a certain area site. It is now asking to
11 be expanded. I mean, it's reasonable to ask that question.
12 Things change. And only by having a historic designation on
13 the property can you actually control that, be sure of
14 controlling it. I've seen it change too many times when
15 people try to do it, which is the reason why I've never met
16 a case where the property's diminished in size. It might
17 have happened. I'm sure it did.

18 I think that the, there's a, I think the, I'm not
19 a traffics, I'm not here to comment on any traffic, I'm not
20 a member of the community. But if a road does go up, it is
21 going to impact the housing. I looked at the point of
22 whether it -- and I didn't want it going through the
23 historic site, and that was the reason it was rejected
24 primarily before -- if you make it in the green area to the
25 north of that, you have the same problem; you're too close

1 to the corner. Already, putting a road there is closer
2 than, than usually recommended. And I think the applicant
3 accept that and recognize that fact. And if you do it on,
4 onto Pershing, you get even closer if you try and just do it
5 through the other thing. And it, you know, you're coming up
6 -- yes, no. I think that would be, that would not be a --
7 but I'm not a, I'm not getting into transportation; I'm just
8 saying why I would like a cul-de-sac, as you call it, or T,
9 not a road going through.

10 MS. ROBESON: Okay. I had a question. Which was
11 the view you said was important of the--

12 MR. DOGGETT: The view, to me, I looked at it
13 again in the rain last night -- I might be colored, view was
14 colored -- but it was in the, facing the building, looking
15 at it --

16 MS. ROBESON: The Riggs-Thompson House.

17 MR. DOGGETT: Yes, looking at the historic
18 building and on the historic properties referred to in the
19 plan. If you look at it from the southwest corner, in fact,
20 you're facing the last row of houses at about 30 degrees --

21 MS. ROBESON: Along Ellsworth?

22 MR. DOGGETT: No, no.

23 MS. ROBESON: The southeast corner?

24 MR. DOGGETT: Yeah, yeah, along, we're talking
25 about the -- oh, which, we were talking about the main, the

1 Riggs?

2 MS. ROBESON: Yes.

3 MR. DOGGETT: Oh. That, you're looking at the
4 corner --

5 UNIDENTIFIED SPEAKER: Are you talking about this
6 area?

7 MR. DOGGETT: Yes, yes, yeah, where your finger
8 is.

9 MS. ROBESON: Oh, the southwest -

10 MR. DOGGETT: Yes.

11 MS. ROBESON: -- corner of -- MR. DOGGETT:
12 Yes, yeah, yes.

13 MS. ROBESON: Okay.

14 MR. DOGGETT: To me, it's the best and the longest
15 view, and the most attractive, and it's, it has a very nice
16 row of trees coming from that sight line, pine trees going
17 through, plus the two, what I think are beech trees, and I'm
18 not sure of that, on the actual site, which define the end
19 of the site. There's going to be a lot of the good trees
20 that go down if you put houses there, that's to, otherwise,
21 you have no house use. It's a very difficult site. You
22 have this affirmative site where you start off making
23 compromises before you do anything.

24 MS. ROBESON: And what's your basis for saying
25 that's the best view of the house?

1 MR. DOGGETT: Urban designer, architect, urban land
2 planner, just --

3 MS. ROBESON: In your expert opinion?

4 MR. DOGGETT: Yes. I think, well, I think, as Mr.
5 Harris will agree, he said that the one, the side pointing
6 north was the back of the house, am I right, Mr. Harris? I
7 think you called me, you pushed me on that. Finally, I'd
8 agreed to you, as we come up this time.

9 MS. ROBESON: Mr. Brown, any more questions?

10 MR. BROWN: Nothing further.

11 MS. ROBESON: Mr. Harris?

12 MR. HARRIS: While we're fresh on that point, let
13 me ask about that. You're saying that the views of the
14 house are best from, what you're calling the southwest
15 corner, if you will --

16 MR. DOGGETT: I'd say, yeah.

17 MR. HARRIS: -- of the front yard?

18 MR. DOGGETT: I would say the southwest and the
19 south have the best views. I think the views to the north
20 are going to be where the additions are on, and as you've
21 said, as we agree, it's the back of the house. I think you
22 have enough space around it with the 1.4 not to need the
23 additional space at the top. It would be nice to have that
24 as open space, not developed, but I think not at the expense
25 of the historic property.

1 MR. HARRIS: I would have thought the views were
2 most important from Pershing Drive, where the public can be,
3 not from the middle of the back of somebody's yard on Cedar
4 Street, where the public can't be. Aren't views of historic
5 resources most important where they can be viewed?

6 MR. DOGGETT: Be looked at? No, I don't know
7 whether Pershing Drive's ever going to be continually one
8 way. I must admit, I broke the law yesterday by coming down
9 Pershing and there's about a 30-foot thing where it says,
10 "No, no" and I sort of looked around and went down. And
11 where I, and as a further statement, as a, where I live we
12 treat the signage as kind of a challenge rather than a
13 direction. This is by the cathedral.

14 MS. ROBESON: Well, I can't say what you say here
15 stays here, so --

16 MR. DOGGETT: Okay.

17 MS. ROBESON: -- be careful.

18 MR. DOGGETT: So let me --

19 MR. HARRIS: Fortunately, we're more abiding, law-
20 abiding here than in Britain.

21 MR. DOGGETT: Oh, no, 75 percent of the houses and
22 the cars are with Maryland plates, and most of them get
23 tickets when they come up Observatory Circle illegally, they
24 make an illegal right turn.

25 MR. HARRIS: All right. So --

1 MR. DOGGETT: So that's the, that's being, like
2 the --

3 MS. ROBESON: But his question --

4 MR. HARRIS: Let's return to my question.

5 MR. DOGGETT: Yeah. I don't --

6 MR. HARRIS: My question is --

7 MR. DOGGETT: Yeah, no.

8 MR. HARRIS: -- isn't a view from the public
9 street of an historic resource more important than an
10 internal view that's not accessible to the public?

11 MR. DOGGETT: Well, you can get a view both ways
12 from the street. The south has that nice balcony and
13 everything, the portico --

14 MR. HARRIS: How do you --

15 MR. DOGGETT: No. I'm -- yeah.

16 MR. HARRIS: How do you get a view from the
17 southwest corner from the street?

18 MR. DOGGETT: Oh, you do, you come, you can get
19 the, if Pershing, if you come down here, you walk up here,
20 if you want to look, this is a historic building, you know,
21 Mr. Harris, you're not going to drive by, you're going to
22 park and you're going to look around there. That's the --

23 MR. HARRIS: Isn't it private property?

24 MR. DOGGETT: If the, most private people at a
25 historic time will let you see people, let people go in for

1 a certain extent of time.

2 MR. HARRIS: Okay. All right. I guess we'll just
3 have to disagree on that. On that historic site as well,
4 are you aware that the SDP that EYA is showing, that that
5 row of townhouses --

6 MS. ROBESON: Which one?

7 MR. HARRIS: I'm sorry. The current one that's
8 on --

9 MS. ROBESON: The 12.5?

10 MR. HARRIS: The 12.5, yes, thank you. That the
11 row of townhouses nearest the corner about which --

12 MR. DOGGETT: Yeah.

13 MR. HARRIS: -- we were just talking, is only
14 about, what, 25 feet closer to the historic house than what
15 you're showing here?

16 MR. DOGGETT: It's about, well, if you have the
17 frontage on it, it's about 30 and 5 feet, I'd say. I'd say
18 30 feet. It is still important because you eliminate the
19 trees, and you do not get that view. You get, you've got
20 the, the way to get to the front of the house plus the
21 depths of the house. What is the depths of the house?

22 MR. HARRIS: The --

23 MR. DOGGETT: I think the scale is about 40 feet.

24 MS. ROBESON: Well, you can't ask questions.

25 MR. DOGGETT: Oh, okay.

1 MS. ROBESON: He has to ask the questions.

2 MR. HARRIS: You're telling me --

3 MR. DOGGETT: So we're time --

4 MR. HARRIS: -- that the view from here to here is
5 significantly different than the view from here to here, and
6 I'm looking at --

7 MS. ROBESON: Wait. Mr. Harris --

8 MR. DOGGETT: No.

9 MS. ROBESON: -- you've got to describe "here to
10 here."

11 MR. HARRIS: Yes, okay. All right. I'm using the
12 exhibit of the RT-12.5 SDP and --

13 MS. ROBESON: Yes. The dual --

14 MR. HARRIS: -- comparing it with Mr. Doggett's
15 plan that is Exhibit --

16 UNIDENTIFIED SPEAKER: 314V.

17 MS. ROBESON: Which is 314V.

18 MR. HARRIS: 314V. So are you telling me that
19 there is a significant difference of the historic house from
20 the point on 314 --

21 MR. DOGGETT: Yes.

22 MR. HARRIS: -- there to there?

23 MR. DOGGETT: Yes. Yeah.

24 MR. HARRIS: Okay.

25 MR. DOGGETT: The actual boundary is the, of the

1 Cedar Street properties, the one between 5 and 6, exactly on
2 that line. Also, you have the preservation of the trees,
3 which again, adds to the character and the color of the
4 view.

5 MR. HARRIS: Would you agree with me that the line
6 is not between 5 and 6, but at the corner of lot number 5?

7 MR. DOGGETT: It is between 5 and 6, the property
8 line, and do you remember, you gave -- I saw it was given
9 the property line, the survey line. One, two, three, four,
10 five. Yeah, that's right. Would you like to see that?

11 MS. ROBESON: Yes. What are you looking at? Do
12 you know --

13 MR. HARRIS: I'm looking at, he's, I'm referencing
14 Exhibit 286, the --

15 MS. ROBESON: Okay.

16 MR. HARRIS: -- the first plat in 286. Actually,
17 it's also Exhibit 65, page 4.

18 MS. ROBESON: Oh, I see. The first plat in 286?

19 MR. HARRIS: Well, it shows up everywhere
20 basically.

21 MS. ROBESON: Okay.

22 MR. DOGGETT: Yeah. They all show the line
23 between 5 and 6 extended.

24 MS. ROBESON: Is this the reserved 61 --

25 MR. HARRIS: Okay. May I see that?

1 MR. DOGGETT: Yes, sure. Show it there.

2 MS. ROBESON: -- 647 square feet? In Evanswood
3 section 1?

4 MR. HARRIS: One, two, three, four, five. Oh,
5 between -- I see what you're saying.

6 MR. DOGGETT: Yeah.

7 MR. HARRIS: I think we're saying the same thing.

8 MR. DOGGETT: Yeah, okay.

9 MR. HARRIS: It's on the property line --

10 MR. DOGGETT: It's on the property line --

11 MR. HARRIS: -- between --

12 MR. DOGGETT: -- between 5 and 6.

13 MR. HARRIS: -- I thought you were --

14 MR. HARRIS: No, I misunderstood you.

15 MR. DOGGETT: Yeah, okay.

16 MR. HARRIS: Yes, you're correct. Thank you.

17 MS. ROBESON: What'd you say, Mr. Harris?

18 MR. DOGGETT: Maybe show, you want to show her?

19 MR. HARRIS: That the line --

20 MS. ROBESON: Did you tell him he was correct?

21 MR. HARRIS: Yes. I admit it when it's true.

22 Would you agree with me that the distance, the difference in
23 the setback from the historic house under our 12.5 SDP, the
24 southeast most townhouse --

25 MR. DOGGETT: Yeah.

1 MR. HARRIS: -- the distance between that and the
2 house is about 15 feet difference in yours?

3 MR. DOGGETT: I mentioned it more, I measured more
4 than that. I have it --

5 MR. BROWN: Do you want to use the scale?

6 MR. DOGGETT: Yeah. It's 40 scale. Can I do
7 that?

8 MR. BROWN: This one covers the --

9 MR. HARRIS: Not the top one, the bottom one.

10 MR. DOGGETT: No, this end. I'd make it -- if you
11 take the front walks, and the house, I'd make it nearly 40
12 feet, 37 feet. 40 scale.

13 MR. HARRIS: Total distance?

14 MR. DOGGETT: Yes.

15 MS. ROBESON: Are both plans 40 --

16 MR. DOGGETT: Down, put the line here, it's one,
17 two, three, four, five. It's starting right there, yeah,
18 it's about 37, 38 feet.

19 MS. ROBESON: Is it, okay. You're pointing to the
20 exhibit --

21 MR. DOGGETT: Exhibit here..

22 MS. ROBESON: -- that has both the RT-15 and the
23 12.5.

24 MR. HARRIS: What scale are you using?

25 MR. DOGGETT: 40.

1 MR. HARRIS: Where are you marking from?

2 UNIDENTIFIED SPEAKER: Is Mr --

3 MR. DOGGETT: One, two, three, four, five.

4 UNIDENTIFIED SPEAKER: Mr. Iraola is not
5 testifying.

6 MR. DOGGETT: Measuring from there --

7 MR. HARRIS: No. I see. No.

8 MR. DOGGETT: Part of the house, and that private
9 part --

10 MR. HARRIS: The question -- no, thank you. The
11 question is, the difference in the dimension -- excuse me
12 one second -- turning to the RT-12.5 schematic development
13 plan, the difference in the dimension from the corner of
14 this townhouse to the corner of the historic --

15 MS. ROBESON: The southeast corner of the --

16 MR. HARRIS: The southeast corner of the last
17 townhouse to the southwest corner of the Riggs-Thompson
18 House, comparing that distance with the distance on yours.

19 MR. DOGGETT: Yes. This is much better. I get a
20 wider view --

21 MR. HARRIS: No, I'm asking what the difference in
22 the dimension is.

23 MR. DOGGETT: Oh. From here, it's about 150, 120.

24 MR. HARRIS: 120 --

25 MR. DOGGETT: Yeah.

1 MR. HARRIS: So --

2 MR. DOGGETT: That's the corner of the house
3 ignoring the pedestrian way.

4 MR. HARRIS: But, in any respect, there is a 20-
5 foot difference between those two, wouldn't you agree with
6 me?

7 MR. DOGGETT: No. I wouldn't express it --

8 MR. HARRIS: 120 versus 140?

9 MR. DOGGETT: 150.

10 MR. HARRIS: Oh, 150, I'm sorry. It was, I saw a
11 different measurement. Okay, 30 feet.

12 MR. DOGGETT: Yeah.

13 MR. HARRIS: The --

14 MR. DOGGETT: But also, remember, you're aligned
15 with the trees along the Cedar, part of the Cedar Street
16 houses. You also have the beech trees and everything along
17 the side, which adds to the view. The trees are not just
18 kept because they're nice trees; they're should be kept
19 because of that, but also part of the urban design scheme
20 the trees are views.

21 MR. HARRIS: You're not suggesting that any of the
22 trees along that Cedar Street area that are on the open
23 space to the front of the house here are being proposed to
24 be removed, are you?

25 MR. DOGGETT: No, no.

1 MR. HARRIS: No, they'd all stay.

2 MR. DOGGETT: No, no. These are, I don't have, I
3 did not have a full staff of everybody. Just one man with a
4 lame leg, yesterday, just doing ideas and putting it on a
5 plan. Those, these, no, those trees will be the saved.

6 MR. HARRIS: These trees --

7 MR. DOGGETT: Yeah --

8 MR. HARRIS: -- right there?

9 MR. DOGGETT: -- no, they'll be retained, yeah.

10 MR. HARRIS: Okay. I actually commend you on your
11 plan to a degree. I think you've taken our plan and
12 reproduced it to a large degree. Wouldn't you agree, you've
13 taken the same organizational elements?

14 MR. DOGGETT: Yes, which is what I was, which is
15 what I was told to do, actually, yes.

16 MR. HARRIS: Yes.

17 MR. DOGGETT: Or what I assumed I had to do.

18 MR. HARRIS: And do you believe the plan that
19 you've drawn now is an appropriate plan?

20 MR. DOGGETT: With those other recommendations I
21 added it as afterthoughts, yes.

22 MR. HARRIS: And so the organization of townhouses
23 at, in rows perpendicular to Springvale, you think is an
24 appropriate planning technique.

25 MR. DOGGETT: Yeah, with the center one, with the

1 small ones taken out, and the rows, where you have a lot of
2 the houses, the rows should be about five feet or some
3 length off center from the other ones.

4 MR. HARRIS: Have you, I think you said you hadn't
5 done any grading studies for this plan at all, right?

6 MR. DOGGETT: No, I had not, no.

7 MR. HARRIS: And have you reviewed --

8 MR. DOGGETT: I looked well, yeah, pretty well
9 what, you graded it for me.

10 MR. HARRIS: Have you reviewed the road access
11 with DOT or the Department of Fire & Rescue --

12 MR. DOGGETT: No.

13 MR. HARRIS: -- to see if it's adequate?

14 MR. DOGGETT: I -- no.

15 MR. HARRIS: You've heard a lot of testimony here
16 today and yesterday about fire access needing either a cul-
17 de-sac or an appropriate turnaround there.

18 MR. DOGGETT: I --

19 MR. HARRIS: So wouldn't this plan have to change
20 to accommodate that?

21 MR. DOGGETT: If -- either that, you could have a
22 T point turn, or you would have a cul-de-sac. I would
23 prefer a cul-de-sac, or what I call a circle, or roundabout,
24 okay?:

25 MR. HARRIS: Right.

1 MR. DOGGETT: So 90 foot. It means you would lose
2 probably three units, okay?

3 MR. HARRIS: Or you could extend it further to the
4 right, to the east.

5 MR. DOGGETT: That would go on the historic
6 property, wouldn't it?

7 MR. HARRIS: Well, that's a big debate. We don't
8 think it is the historic property.

9 MR. DOGGETT: Oh, you know --

10 MS. ROBESON: Well, don't go there.

11 MR. HARRIS: If it's not historic property, you
12 could extend that cul-de-sac further?

13 MR. DOGGETT: If it wasn't historic, yes.

14 MR. HARRIS: And you might even get Historic
15 Preservation Commission approval to put a cul-de-sac there.

16 MR. DOGGETT: That, I don't -- well, they wouldn't
17 be involved if it wasn't their property, yeah.

18 MR. HARRIS: No, if it were. If it were within
19 the historic setting. There's no prohibition against
20 getting approval to build a road --

21 MR. DOGGETT: Oh, I think --

22 MR. HARRIS: -- or a cul-de-sac.

23 MR. DOGGETT: I think I would, yes. If you're
24 talking about a roundabout going into a historic setting,
25 yes. If it wasn't historic setting, if they say no, if it's

1 not that, then it becomes another issue, and I'd have to
2 look at that in the general plan.

3 MR. HARRIS: Wouldn't you --

4 MR. DOGGETT: But you're right, in terms of the
5 way it was done, was to compare one with the other.

6 MR. HARRIS: Wouldn't you agree with me that a
7 plan with 9.1 units per acre is a relatively low density in
8 an urban area?

9 MR. DOGGETT: Not as a transition. I always, I
10 would have said, in this instance, as you remember, we're
11 not going back to what we did in July, whatever it was,
12 October, whatever. I kind of preferred the semi-detached and
13 single family. I thought that was a easy transition into
14 the predominantly single family housing and the central
15 business district and the apartment buildings. But failing
16 that, I'm not sure. I think if you treat the block as a
17 whole, I think that's as much as you might get comfortably.

18 MR. HARRIS: You preferred your other plan, you're
19 saying, or --

20 MR. DOGGETT: No, I'm not going, I'm not going to
21 say. I preferred, I preferred it at the time, okay?

22 MR. HARRIS: Isn't it true that that plan would
23 have built, would have encroached onto the tree area along
24 back of the --

25 MR. DOGGETT: Yeah --

1 MR. HARRIS: -- Cedar Street, but more?

2 MR. DOGETT: Yeah, absolutely. Two things. The
3 housing I showed even further away from the historic site
4 and up to the boundary, that's one thing. Secondly, and
5 this is a more important thing, I was concerned showing that
6 how you could get the maximum number of units. The trees
7 and things will be sorted out when I did a plan. It was a
8 suggestion. It's not up to me to design this plan. So
9 where -- you could take single family semi-detached and move
10 them much more flexibly than townhouse, rows of townhouses.

11 MR. HARRIS: Wasn't your plan, though, going to
12 require basically mass grading the site in order to get the
13 level buildable pads for the houses, the roads, and the
14 driveways?

15 MR. DOGETT: I'm not sure that it did, anymore
16 than this would. I think both are going to mean an awful
17 lot of excavation, what ever one does. I don't think the
18 single family necessarily. Now, this is not here, but Tom
19 Kamster (phonetic sp.), who, when I was, drew the plan
20 because of my leg, his, does a lot of the planning work and
21 layouts for Bowman, who did these plans. And I think he
22 said that they're both going to take a lot of excavating.
23 We realize that.

24 MR. HARRIS: And wouldn't you agree with me that
25 the road improvements that the county will require along

1 Springvale Road, the widening of the road, the installation
2 of the sidewalk, and the utilities along there, will
3 basically require removal of all of those trees along
4 Springvale?

5 MR. DOGGETT: No, I don't think so. I'm
6 increasing it a depth of, what, about 25 feet, and 20 feet
7 from what you have shown.

8 MR. HARRIS: What I'm talking about is the
9 applicant, anybody who develops this property is going to be
10 required to widen Springvale Road to the south, to put a
11 sidewalk in there, and to put the utilities --

12 MR. DOGGETT: Yes.

13 MR. HARRIS: -- along there, in the very same spot
14 where the trees are along the street today. Isn't that
15 going to take those trees out?

16 MR. DOGGETT: I think the widening of the road is
17 shown north of the line that you have there, am I right on
18 that?

19 MS. ROBESON: What line are you referring to?

20 MR. DOGGETT: There is --

21 MR. BROWN: Here's the exhibit.

22 MR. DOGGETT: Yeah, okay.

23 MS. ROBESON: Which exhibit is it?

24 MR. DOGGETT: The exhibit, this is a reduction of
25 EYA's, and you see the orange line. I'm saying that from

1 the orange line down, you take a house, a single house off
2 each row of those --

3 MS. ROBESON: Wait. I really, I'm sorry --

4 MR. DOGGETT: I don't know what the number is.

5 MS. ROBESON: -- I need to know what exhibit
6 you're talking about.

7 MR. DOGGETT: Is that a number?

8 MS. ROBESON: Do, can you help him, Mr. -- is it
9 the revised site plan that you submitting on March 19th?

10 MR. DOGGETT: I'm looking at the reduction of the,
11 reduction of the revised site plan.

12 MS. ROBESON: Well, there's one that was submitted
13 on March 19th. Let me see.

14 MR. BROWN: I think we're looking at 327A.

15 MS. ROBESON: That's it. Okay. Is that what he's
16 looking at, Mr. Harris?

17 MR. HARRIS: At -- I'm not sure, I guess so, yes.

18 MR. DOGGETT: And I think a winding of --

19 MS. ROBESON: Yes, it is.

20 MR. DOGGETT: -- the road is shown north of the
21 property line, the red line, or the setback line.

22 MR. HARRIS: Do you know where the trees are along
23 Springvale Road, the existing trees?

24 MR. DOGGETT: No, not too much. I've seen them,
25 but I don't, I did not measure them because I thought it

1 would be a configuration. I did not, I rather like the idea
2 of the straightening of the line.

3 MR. HARRIS: Is it possible that they are, some of
4 them are in the public right of way and that some are in the
5 area --

6 MR. DOGGETT: It's possible.

7 MR. HARRIS: -- that where the sidewalk would be?

8 MR. DOGGETT: It's possible. Most, or actually
9 not in the public right of way, I don't think, but it's
10 possible that some of them are.

11 MR. HARRIS: Did you survey where the public right
12 of way was?

13 MR. DOGGETT: I looked at it briefly, to see
14 roughly where it would be, but I didn't measure the thing,
15 no.

16 MR. HARRIS: Where did you look to see where
17 the --

18 MR. DOGGETT: I --

19 MR. HARRIS: -- trees are and the --

20 MR. DOGGETT: When I walked down yesterday, down
21 Springvale.

22 MR. HARRIS: Can you tell me by walking down that
23 street where the right of way line is?

24 MR. DOGGETT: No.

25 MR. HARRIS: Thank you.

1 MR. DOGGETT: I can see where the increase of the
2 road is. I can take a rough guess on that.

3 MR. HARRIS: Under any of the plans here, or
4 including both of yours, basically the trees in the center
5 of the site are not likely to be retained.

6 MR. DOGGETT: No, they're not, unfortunately. I
7 think I showed a couple of trees just being preserved, the
8 ones in the dark green. It's unfortunate, but I'm being
9 practical here, okay? If I take every tree into
10 consideration, you're not going to have any houses. You
11 will end with a bungalow, okay?

12 MR. HARRIS: The tree that you show in dark green
13 in the center there --

14 MR. DOGGETT: Yeah, I measured that --

15 MR. HARRIS: -- that's not really likely to be
16 preserved under this plan because you've got a sidewalk
17 going through the center of it.

18 MS. ROBESON: When you said "in the dark green in
19 the center," you're talking about 314B, right?

20 MR. HARRIS: 314B in the center there.

21 MR. DOGGETT: I think you could take the sidewalk
22 and loop around it. I did that, if you want to look at
23 examples, I've done that on Mass. Avenue outside the British
24 Embassy, before Bolivian, and you will see those are, the
25 sidewalks, the paths are moved to miss trees. And I think

1 you could, you could, you're talking one tree. I thought I
2 could save that one tree. There are many trees there that
3 we can't save. The ones I can save --

4 MR. HARRIS: Do you know what kind --

5 MR. DOGGETT: -- are the ones that the --

6 MR. HARRIS: -- of tree that is?

7 MR. DOGGETT: I can't remember it actually.

8 MR. HARRIS: Do you know what --

9 MR. DOGGETT: It was an oak, I think.

10 MR. HARRIS: Do you know what condition it's in?

11 MR. DOGGETT: I thought it was a reasonable
12 condition.

13 MR. HARRIS: Are you, do you know the, what makes
14 a tree healthy or unhealthy? Are you an arborist?

15 MR. DOGGETT: I am not an arborist, but I, over a
16 20-year period, I've been involved on trees on the, with an
17 arborist on, outside the British Embassy, which is the
18 biggest project on Mass. Avenue I planned. Also the British
19 Embassy gardens, which is considered one of the best in the
20 city. I know what makes it, an arborist would say, "I
21 cannot build under the canopy," okay?

22 MR. HARRIS: Right.

23 MR. DOGGETT: I can sometimes feel that I can
24 build under a canopy.

25 MR. HARRIS: Wouldn't you agree with me that your

1 plan here, Exhibit 314B, puts houses in an alley closer to
2 the southwest corner of the entire site where the arborist
3 on Friday was saying the most important trees are?

4 MR. DOGGETT: Yeah, I looked at that. We have
5 eliminated one row of trees where there was a couple of
6 trees in the front of, in front of the house. I'm, if you
7 feel that badly about it, Mr. Harris, we can eliminate those
8 four houses at the end and keep all the trees.

9 MR. HARRIS: And you've not studied whether these
10 trees can be maintained under this plan or not.

11 MR. DOGGETT: No, because I'm not an arborist.
12 All I know is that the trees I've shown to the south have a
13 much greater likelihood of surviving than the ones you've
14 shown on your plan, you only showed two or three trees
15 there.

16 MR. HARRIS: Would you agree with me that the
17 zoning ordinance in Montgomery County and the practice
18 allows for the calculation of green area and density based
19 on an overall gross tracked area?

20 MR. DOGGETT: Yes.

21 MR. HARRIS: And that the density can include
22 the --

23 MR. DOGGETT: Oh, wait a minute, sorry, wait, what
24 -- I would, if this was a historic property, I would say the
25 historic property is a separate property.

1 MR. HARRIS: And where does that say that in the
2 code?

3 MR. DOGGETT: I'm not sure it does say that in the
4 code. I'm quite sure that, historically, that's what it
5 would be handled.

6 MR. HARRIS: So you would disagree with our
7 Planning Board?

8 MR. DOGGETT: I could disagree with the Planning
9 Board, yes.

10 MR. HARRIS: Who do you think knows more about the
11 zoning ordinance, them or you?

12 MR. DOGGETT: Who knows more about planning and
13 urban design? I do.

14 MR. HARRIS: We're not talking about --

15 MR. DOGGETT: I'm not talking about the code, and
16 I can disagree with the code the whole time.

17 MR. HARRIS: Okay.

18 MR. DOGGETT: That's what they paid me in Fairfax
19 County to do. But I think Bowman shows --

20 MS. ROBESON: I get your point, Mr. -- so you
21 don't have to keep --

22 MR. DOGGETT: I'm not an arborist.

23 MS. ROBESON: -- trying to squeeze it out of --

24 MR. HARRIS: I've moved on, I've moved on. So are
25 you aware that the, both the Planning Board, the planning

1 staff, and the community have requested that we make the
2 elevations fronting, or the elevations on Springvale Road
3 fronts rather than sides of units? You seem to prefer
4 something different.

5 MR. DOGGETT: Yeah, but I qualified that. I said
6 I understood that, that I understood that there was a
7 difference in architectural approach and experience that one
8 has, okay? I'm not questioning in that, the community, I
9 realize that.

10 MR. HARRIS: You said that you don't think this
11 model compares to what is being proposed.

12 MR. DOGGETT: No.

13 MR. HARRIS: The testimony on Friday was that
14 there are two, three differences, if you will. One is that
15 these units are 10 feet taller; two, that what I call the
16 mews, for lack of a better name, is narrower in this than in
17 the proposed schematic development plan; and three, that
18 this shows units that close off the end of the mews --

19 MR. DOGGETT: Yeah.

20 MR. HARRIS: -- whereas the proposed SDP leaves it
21 open so that the view is there, and that the -- well, so,
22 other than that, what differences do you see?

23 MR. DOGGETT: It's like seeing an established
24 Oscar-winning movie with a early Laurel and Hardy movie,
25 it's totally different. I mean, it is different. And the

1 architect will agree it's different, Mr. Harris.

2 MR. HARRIS: I'm trying to ask you, explain why.

3 MR. DOGGETT: I see the difference. It is a sort
4 of three-sided, it's not a court, three-sided development
5 with about one through four, five houses there. And you
6 have a closure of the house there which determines a space.
7 In this one, you have the row of houses that you look
8 through some trees, and you're going to see from one end to
9 the trees at the Cedar, the Cedar Street, what I call the
10 Cedar Street trees, which in actual fact, help you, because
11 of the scale of them diminishes the scale of the houses.
12 It's a credit to you, but -- well, it's a credit to me
13 actually. I don't, I am baffled by what you're asking me
14 to, you're asking me to find a similarity. Well, I really
15 find it difficult to do. And I'm --

16 MR. HARRIS: No, I'm asking you to find a
17 dissimilar.

18 MR. DOGGETT: -- I'm not criticizing this. Yeah?

19 MR. HARRIS: I'm asking you to find the
20 dissimilarities. So far, I've heard you say, "This one is
21 closed off at the end, whereas as the SDP is open at the
22 end." And I had already identified that, so I'll --

23 MR. DOGGETT: Yeah.

24 MR. HARRIS: -- agree with you on that. Any other
25 dissimilarities?

1 MR. DOGGETT: This is -- well, this a three-sided
2 court, if you want, without the proper ending at this side.
3 The other one is a channel, if you want.

4 MR. HARRIS: Well, that's what we just talked
5 about.

6 MR. DOGGETT: Yeah.

7 MR. HARRIS: Anything other than that?

8 MR. DOGGETT: Well, that's not anything but that;
9 it's just a massive difference.

10 MR. HARRIS: So are you saying it, which do you
11 think is more appropriate? To close it off, the way the
12 model is shown, or to leave it open?

13 MR. DOGGETT: I would say that as in -- some of
14 the other developments I've seen do it very nicely, but if
15 you mix, if you can mix the right angle and the -- I don't
16 know. It's a big job to do. If you add units across there
17 so you get a breakup of those long vistas that go nowhere,
18 it would be an improvement. Now, that would be -- I'm
19 getting into the architectural urban design on this, I know,
20 but I think that is, that is the way that would probably be,
21 that would be the way I see such a massive difference
22 between this and that --

23 MR. HARRIS: Okay. Just to make clear --

24 MR. DOGGETT: -- and yours.

25 MR. HARRIS: -- if I can summarize that. You're

1 saying that the model is better because it closes off the
2 end of what I call the mews, than is the proposed plan that
3 leaves it open?

4 MR. DOGGETT: If you had a closure, I don't know
5 whether I would have it that scale. I would say it would be
6 a big improvement to have a development where you have the
7 houses at angles as well as going in one direction. In
8 short, it's referred to as a barracks, okay. This would
9 break that down.

10 MR. HARRIS: Let me --

11 MR. DOGGETT: Now, I'm not sure you can do this --

12 MR. HARRIS: -- try one more time --

13 MR. DOGGETT: -- with the topography.

14 MR. HARRIS: -- because I think it's a "yes" or
15 "no" question. And I'm trying to understand --

16 MR. DOGGETT: Okay.

17 MR. HARRIS: -- your answer. "Yes" or "no," do
18 you believe the model is a better design or the open use is
19 a better design, "yes" or "no."

20 MR. DOGGETT: I would say --

21 MR. HARRIS: Well, which one?

22 MR. DOGGETT: Okay, it's not --

23 MR. HARRIS: I'm sorry, not "yes" or "no." Yes.
24 Which one?

25 MR. DOGGETT: I would say, you would have to look

1 at the thing as a whole. You couldn't just take a group of
2 houses. You have to look at it as a whole to come to an
3 answer. And I see your architect is shaking, nodding his
4 head too. If you did that, in corporation with a closure,
5 it would probably be an improvement.

6 MR. HARRIS: Okay. I think I understand. Oh.
7 Mr. Doggett --

8 MR. DOGGETT: Yes?

9 MR. HARRIS: -- are you aware that the setback
10 requirement for R-60 homes for a front yard is 25 feet?

11 MR. DOGGETT: Yes, I seem to remember that.

12 MR. HARRIS: And are you aware that our plan, the
13 SDP for the RT-12.5 is showing those units set back 25 feet
14 as well, matching --

15 MR. DOGGETT: Yes.

16 MR. HARRIS: -- the setback --

17 MR. DOGGETT: Yes.

18 MR. HARRIS: -- on the other side?

19 MR. DOGGETT: Yeah.

20 MR. HARRIS: And yours is showing something more
21 like --

22 MR. DOGGETT: Another --

23 MR. HARRIS: -- 40 or 50 feet?

24 MR. DOGGETT: -- 25 feet, I think.

25 MR. HARRIS: Pardon?

1 MR. DOGGETT: 25 feet.

2 MR. HARRIS: No, because ours is 25 feet, and you
3 took out a whole other unit --

4 MR. DOGGETT: Yeah.

5 MR. HARRIS: -- so that's more like 45 feet.

6 MR. DOGGETT: A unit 45 feet wide?

7 MR. HARRIS: The set -- let's, let me step back.
8 The setback from the right of way in your plan for these
9 units is what?

10 MR. DOGGETT: I seem to, I measured it and of
11 course, you get narrow ones and thick ones, and this is a
12 general concept, from the setback line, it would be 25 feet,
13 plus I think I had 20 feet.

14 MR. HARRIS: So you're recommending a setback from
15 Springvale for those units of 25 feet?

16 MR. DOGGETT: Yeah.

17 MR. HARRIS: Okay.

18 MR. DOGGETT: No, no, no. From your setback of 25
19 feet, I've shown a 20-foot addition.

20 MR. HARRIS: Okay. So --

21 MR. DOGGETT: Yeah.

22 MR. HARRIS: -- 45 feet?

23 MR. DOGGETT: Yeah. I've eliminated one of the,
24 the size between the wide and the narrow --

25 MR. HARRIS: Okay.

1 MR. DOGGETT: -- houses.

2 MR. HARRIS: I have nothing further.

3 MS. ROBESON: All right. Mr. Brown?

4 MR. BROWN: Can I look at your files for one
5 minute, because I --

6 MS. ROBESON: You may.

7 MR. BROWN: -- seem to be missing something.

8 MS. ROBESON: I've kind of messed them up. 314.

9 MR. BROWN: May I borrow Exhibit 328?

10 MS. ROBESON: 328. This is 328C. This is 328D.

11 MR. BROWN: That's the one I want.

12 MS. ROBESON: Okay. Mr. Doggett, I want to show
13 you what's been marked Exhibit 328B, and I just want to
14 orient you for a moment. If you will look at this 3-D model
15 here --

16 MR. DOGGETT: Yeah.

17 MR. BROWN: -- correct me, Mr. Harris, if I am
18 wrong, but this 3-D model, juxtaposed on this aerial view,
19 would be one of these blocks right here.

20 MR. DOGGETT: Yes, okay.

21 MR. BROWN: Okay? With the courtyard facing out
22 toward Danville Street. Are you oriented now?

23 MR. DOGGETT: Yes, yeah.

24 MR. BROWN: Are you at all familiar with this
25 particular commercial development block in Arlington?

1 MR. DOGGETT: Yeah, a little bit, not a lot
2 though, a little bit. I've been by it two or three times.

3 MR. BROWN: I would like you to compare the
4 context, the neighborhood context of this development and
5 these townhomes with the project under consideration in this
6 case.

7 MR. DOGGETT: Well, it's a much smaller, it's just
8 a small portion of the whole thing, yeah.

9 MR. BROWN: I'm talking --

10 MR. DOGGETT: You have the, yeah, okay, you
11 have --

12 MR. BROWN: I'm talking about the environs, if you
13 will.

14 MR. DOGGETT: Okay. This is, well, retail
15 industrial here. This is the, where Starbucks is, that's
16 what I can see. Well, the unit is facing a road and is
17 backed onto the nonresidential here with Starbucks and
18 retail up here. I don't know, I can't remember what
19 happened down here.

20 MR. BROWN: Do you regard that development as
21 reasonably appropriate for the location?

22 MR. DOGGETT: Well, I would have to go, I would
23 say that it's not bad, for the location, yeah. I say, as
24 opposed to what is down here, I think you, kind of brutal
25 along here, where you have the long stretch of uninterrupted

1 townhomes. Yeah, I can see that being reasonable.

2 MR. BROWN: My other question is --

3 MR. DOGGETT: Yeah.

4 MR. BROWN: -- whether or not the context of
5 surrounding properties is comparable to the context of
6 surrounding properties for the Chelsea School site.

7 MR. DOGGETT: Okay. Yeah. No, I think it, well,
8 this is, how is this comparable? It backs right up to the
9 development.

10 MR. BROWN: Well, I'm asking you.

11 MR. DOGGETT: No, no, no.

12 MR. BROWN: I'm asking you if it's comparable.

13 MR. DOGGETT: No, it isn't, no. You've got a main
14 street, and you've got a nonresidential here, nonresidential
15 up here. It's not comparable, I don't think. It might be
16 comparable in that context.

17 MR. BROWN: Thank you.

18 MS. ROBESON: Thank you.

19 MR. BROWN: Mr. Doggett, your --

20 MR. DOGGETT: Yes.

21 MR. BROWN: -- your plan has a, what I think could
22 be described as a T intersection at the end?

23 MR. DOGGETT: Yes.

24 MR. BROWN: Instead of a --

25 MR. DOGGETT: Well, I call them a circle,

1 roundabout, yeah.

2 MR. BROWN: Instead of a circle.

3 MR. DOGGETT: Yeah.

4 MR. BROWN: Do you know, do you happen to know how
5 long those legs of the T have to be in order to qualify for
6 emergency vehicles?

7 MR. DOGGETT: I think it's about 40 feet. I'm not
8 sure. I'm really not 100 percent sure of that.

9 MR. BROWN: Do you know whether or not --

10 MR. DOGGETT: I'm sure that Tom Kamster, who does
11 a lot of these cut the thing right.

12 MR. BROWN: In other words, you think that they're
13 long enough to qualify for fire trucks to back in and back
14 out?

15 MR. DOGGETT: I would think so, yes. And you
16 could always bring it forward if it, if not. And I'm not
17 sure it worries me a lot on that.

18 MR. BROWN: Yes. Do you have anything further to
19 add in light of the, Mr. Harris's questions?

20 MR. DOGGETT: I don't think so. I think I've
21 drawn the comparison and plus, you know, the things I
22 thought would improve their concept. It's --

23 MR. BROWN: Thank you.

24 MR. DOGGETT: I think it's not an unreasonable
25 plan to present to EYA, but it's not, as I say, it is a

1 concept.

2 MR. BROWN: Okay. Thank you.

3 MS. ROBESON: Thank you.

4 MR. DOGGETT: Yes.

5 MR. BROWN: You can pack up.

6 MR. DOGGETT: Oh, okay. That's fairly easy.

7 MR. BROWN: This is your version, this was your
8 copy, right?

9 MR. DOGGETT: Yeah, the folded one.

10 MR. BROWN: All right.

11 MR. DOGGETT: This was yours.

12 MR. BROWN: Right.

13 MS. ROBESON: I'm sorry. I don't know your name.

14 MS. SAMIY: Kathleen Samiy. I'm the --

15 MS. ROBESON: Oh, yes.

16 MS. SAMIY: -- resident and president of the Seven
17 Oaks Evanswood Citizens Association.

18 MS. ROBESON: Okay. My memory faded. You were
19 here Friday. Were you sworn?

20 MS. SAMIY: I was here on Friday and I was sworn
21 in.

22 MS. ROBESON: Okay. You're still under oath, and
23 if you could just state your address for the record.

24 MS. SAMIY: My address is 622 Bennington Drive,
25 Silver Spring, Maryland. As I said, I'm a resident and the

1 president of the Seven Oaks Evanswood Citizens Association,
2 and I'm here to speak personally, but also to address sort
3 of in the big picture, what the neighborhood would like as
4 top priorities. And I really want to try and stick to the
5 three points of the remand order and speak to what we see as
6 the, I see, and the residents feel as the failure of the new
7 plan to be compatible with or deferential towards the
8 surrounding neighborhood.

9 The density and massing cross produces detrimental
10 effects to the surrounding neighborhood. And our
11 neighborhood is very staunchly in favor of preserving the
12 tree canopy on this site, and we feel that these trees are
13 compatible with our neighborhood and that the massing and
14 density will affect these trees if it's changed. The trees
15 at the site are integral to the compatible litmus test for
16 us and must be kept. Anything otherwise is a detrimental
17 effect.

18 I spoke of the green and the gray zones in my
19 first testimony. The green zone is also what I call our
20 green sky, the ring of green trees that tower over the
21 houses just outside of the central business district. The
22 grove of mature trees on the site lay in the green zone, and
23 without them, indeed, the zone that is green will become
24 gray like the CBD pavement and rooftops.

25 The existing urban forests are collectively the

1 abrupt environmental buffer line. The green line of
2 demarcation between the two vastly different zones,
3 residential and commercial. These tree define the distinct
4 difference between our residential community and the central
5 business district.

6 And what really compels us to care so much about
7 the trees is because we see this as a very special
8 privilege, to be permitted to up-zone on this site inside
9 our neighborhood. We really see it as sort of a quality of
10 life and a privileged place for us to live, and we hope that
11 others would be as respectful of the integrity of that green
12 space as we are in our low density neighborhood.

13 And because this zone, the one being requested, is
14 not designated in the master plan, and because the master
15 plan calls for very careful consideration of the edging and
16 buffers that adjoin the CBD, this privilege comes, for us,
17 with a much higher moral and greater responsibility. And
18 that weight of responsibility, that burden really includes
19 ensuring the existing environment of trees that defines,
20 sustains, and identifies our green zone be kept intact.

21 And I really feel great shame that the developer
22 will remove all the large majestic trees as if some new,
23 short-lived under-story street tree are really a fair or a
24 just tradeoff. ETA's burden of proof has been unjustly laid
25 upon the surrounding neighbors because we're here pleading

1 so often to keep the green zone intact by keeping the
2 majestic long-lived trees at this site protected and
3 preserved. We feel very strongly about this.

4 And I, just as an aside, I have a neighbor that
5 has an old house facing mine up on a hill. And in 2004,
6 without, under the eyes of the permitting department, he
7 clear-cut 50 trees on his site. When I couldn't see his
8 house in the dead of winter, we now have a full green grass.
9 And he did it without a sediment control permit at the edge
10 of a creek, and there's this huge difference in the quality
11 and character of the community. And that was over 50 trees.
12 This, I hear, is significantly more.

13 Actually, what is compatible, we find, about
14 clear-cutting, when you're effectively removing all the
15 trees on the site, I've been told, I think, by Jean
16 Cavanaugh, who testimony yesterday, that 77 out of 88 trees
17 on the property will be destroyed. I find that a
18 responsible, recyclable and compatible plan would keep
19 existing trees and add street trees. As they plan, those
20 new street trees will enlarge and broaden the benefits of
21 the trees provided that it helps further enhance our green
22 ring. So we feel that the tree removal undermines the
23 greenness of our residential zone, and that this is
24 environmental degradation that is not compatible, it's
25 detrimental.

1 It's reasonable that the zone be, at a minimum,
2 what I might call compatibility neutral, so there's no loss
3 of canopy at construction and the root systems are
4 protected. The current canopy capacity really should have
5 no detrimental effect. And I think it's important that we
6 don't take away to hope that in 30, 20, 30, 50 years, what
7 we have now will finally fill itself back in. I think
8 that's really part of what we consider important, the canopy
9 cover.

10 I'm going to change tracks now to why the
11 community is strongly opposed to the private street onto
12 Springvale and Pershing, and how the compatibility of
13 massing and density of this applicant relates to how we
14 oppose the secondary exit.

15 For us, the community, the secondary hilltop, the
16 secondary hilltop exit road doesn't pass this compatibility
17 litmus test. The road violates the intent really, and the
18 purpose of a neighborhood traffic restriction plan. And it,
19 which was to limit any addition of cars onto the narrow
20 quiet streets at that northeast quarter of Evanswood. So I
21 just want to be careful that the intent and the limit was
22 really why we were doing that. The cut-through came along
23 with that, but the intent was limit the cars.

24 EYA has shown many drawings and designs, and they
25 showed that the landscape will fit 63 townhouses, but we see

1 this a bit differently. The burden of proof is on the
2 developer; however, the proof of the hilly landscape is what
3 we mostly see, which are flat, one-dimensional pieces of
4 paper. They don't show three-dimensional context. There is
5 actually no legal requirement that they have to provide a
6 conceptual or a contextual three-dimensional model, nor do
7 they, are they required to show the relationship in three
8 dimensions of the massing and density to the actual
9 landscape at this site, and compare it to the surrounding
10 homes.

11 The developer has presented, almost exclusively,
12 drawings which really, what I call mask the massing and
13 denseness of this three-dimensional stepped landscape. Now,
14 why does this matter? Because the massing and density
15 really is required to be compatible with the surrounding
16 neighborhood. And in this case, elevation at this site
17 really matters.

18 By the way, Ellsworth Drive, to the top of the
19 hill, there's a 44-foot difference from Ellsworth to the top
20 of the historic setting. And I have a elevation, I got from
21 Park and Planning that shows that.

22 MS. ROBESON: I'm sorry. Ellsworth traveling east
23 across the site?

24 MS. SAMIY: No, Ellsworth, just standing on
25 Ellsworth --

1 MS. ROBESON: Yes.

2 MS. SAMIY: -- moving up the top of the hill at
3 Riggs-Thompson is a 40-foot --

4 MS. ROBESON: Oh, I see.

5 MS. SAMIY: -- high elevation change.

6 MS. ROBESON: All right.

7 MS. SAMIY: So that's higher than the four
8 stories, 35-foot limit, it's taller than the houses that
9 they plan to build, so just so we have a sense of the
10 context. But this, so this site, a four-story townhouse on
11 a lower elevation will look and feel differently when it's
12 shown next to a two-story home. But because we're seeing
13 flat dimensional drawings, we're not really feeling how the
14 density and the massing are really fitting into this sloped
15 hill site.

16 And to get to that point, the lower parcel, the
17 3., the historic setting being 1.4 is at the top of the
18 hill, the lower parcels, which are steps, slopes, have three
19 defining 10-foot drops on, approximate, while at Ellsworth
20 Drive, and I already said it, is a 40-foot change. So the
21 topography has steep sections, and the most of the density
22 and massing of these barracks townhouses are on the lower
23 steps, and they're very tightly massed together on the lower
24 part. So the lower part is actually built out in its almost
25 fullness. There's not a lot of green space. It's more

1 impervious surfaces all in that, those lower sections. So,
2 and I just think it's important to, because we don't have a
3 requirement, to see this in three dimensions.

4 The treatment, we think that the treatment would
5 be, what treatment do I find would be deferential towards
6 incompatible with our neighborhood is a less dense project.
7 I, we feel that this denseness is really a deference to the
8 townhouse owners and the townhouse developers, and not a
9 deference to the community around it, the density is so
10 packed together.

11 A less dense plan will absorb and keep water on
12 its own site and would minimize erosion and mitigation
13 controls of sewage and other things that will be having to
14 hook up to other parts of the community.

15 Now, our community mentions the slope, water, and
16 hills because they are relevant for us to density
17 compatibility massing. For our community, the excess
18 density and massing laid into the hilly landscape adds to an
19 already overburdened stormwater and sewer system, therefore,
20 the 63 townhouse plan is incompatible and adds what I
21 consider an insidious and detrimental burden to the
22 surrounding neighborhood, and I'll explain why.

23 The stormwater on these parcels, when the water
24 runs off the land, it runs down Ellsworth and connect really
25 into sewage and stormwater that, at over capacity. Many

1 people in this room learned, I can tell you that the Sligo
2 Bennington tributary, which comes out in front of my house,
3 the outflow comes out in front of my house, has illicit
4 discharges and regular overflows. And the uphill area just
5 above this development is under an EPA WSSC consent decree
6 because of the growth has exploded so much. The sewage
7 pipe, which is very small, has not been enlarged.

8 MS. ROBESON: Can you describe, when you say
9 "above," what area do you mean? Do you mean to the,
10 directly to the north?

11 MS. SAMIY: South of, well, up at the top of, at
12 -- let's see -- where City Place Mall sits, do you know
13 where City Place Mall is? Diagonal to the central --

14 MS. ROBESON: In downtown Silver Spring.

15 MS. SAMIY: In downtown Silver Spring, City Place
16 Mall --

17 MS. ROBESON: Yes.

18 MS. SAMIY: -- is where the, the spring of the
19 Sligo Bennington tributary originated. And that spring runs
20 all the way down, it was a creek, from City Place Mall, all
21 the way down Ellsworth Drive, sloping all the way down that
22 hill, past Cedar, past the library. Actually, it's on, it's
23 on the east side, and it was a creek that ran all the way
24 down Ellsworth Drive. However, the stormwater plans of the
25 40s put it underground so it wouldn't flood. But the sewage

1 system was never enlarged. So we see regular illicit
2 discharges. The Bennington tributaries on the Friends of
3 Sligo Creek's website, it's been reporting as an action log
4 for over five years, and --

5 MR. HARRIS: Ms. Robeson, I apologize --

6 MS. SAMIY: -- there's a lot of issues with this.

7 MR. HARRIS: -- for interrupting, but I think she
8 started out by saying she was going to address the three
9 issues on the remand. I don't remember any discussion about
10 sewage issues. This is all new information and unrelated to
11 the remand issues. This site, they even support RTV
12 development of it. And even before, they supported R-60
13 redevelopment of it. So it will redevelop, and the issues
14 of the sewage capacity and lines are not, you know, on the
15 table here.

16 MS. ROBESON: Ms. Samiy, can you --

17 MS. SAMIY: I can, in my next sentence, I could
18 give you reasons, I believe this is important in terms of
19 density, the number of townhomes, because --

20 MS. ROBESON: Okay.

21 MS. SAMIY: -- the larger the capacity, the more
22 the townhomes on the site, the more packed together, the
23 more tightness of these barracks on that 3.85 parcel with
24 less open space to absorb the water and the runoff and
25 excess sewage hookups, I believe should, if, the less number

1 of homes, the less number, the less dense, the less massing,
2 the less stress on an already overburdened system.

3 MS. ROBESON: So it goes to --

4 MS. SAMIY: And I --

5 MS. ROBESON: -- appropriate density?

6 MS. SAMIY: I think it goes to appropriate
7 density, and I think it is a valid point because I did a
8 rough calculation that the 220-unit complex condo that's
9 going in at Cedar Street, I'm guessing, is going to have one
10 or two toilets in each condo, and the 63 townhouses could
11 have two to three toilets in each one, is a range from
12 anywhere from 350 to 630 toilets that could go in.

13 And I think it's really a valid question because
14 WSSC has failed to enlarge that sewer pipe. And I think
15 it's a very valid that the illicit discharges are being
16 talked about a lot in the environmental community, and the
17 action log for the Sligo Bennington tributary is complete
18 proof that the capacity of these systems cannot handle the
19 growth that is happening in downtown Silver Spring.

20 MS. ROBESON: Well, we're not concerned --

21 MS. SAMIY: And I --

22 MS. ROBESON: -- at this point, on the growth
23 that's happening in downtown Silver Spring.

24 MS. SAMIY: Right, but I do think that --

25 MS. ROBESON: We're only concerned --

1 MS. SAMIY: -- at this site, they're going to hook
2 up. And because of the slopes and the denseness, there's
3 going to be less absorption on the site of the water. And I
4 think that that is valid when you have so much impervious
5 surface on this lower elevation, we're going to have less
6 green space to absorb it into its own site. There will be
7 more runoff.

8 Yes, I'm sure, I know there's a lot of new
9 planning and thinking around it, this, and how to better
10 mitigate it, but I do just want, I think it's important that
11 it not be unspoken that there is an existing problem.

12 MS. ROBESON: Well, I -- okay. And I guess --

13 MS. SAMIY: And limiting the denseness is
14 important.

15 MS. ROBESON: I guess what I can kind of
16 anticipate what the applicant is going to say, and he's
17 going to say, "Well, we're going to have to address that
18 before, we may have fewer units, we're going to have to
19 address that before we can build." And what's your response
20 to that?

21 MS. SAMIY: I think that's fair, but we're here
22 today because he wants to rezone. And I think what that
23 rezone becomes and, should be a lower density because I
24 think, in the long run, it will have an impact. So I'm here
25 to say that I think it's speaking to the appropriateness and

1 the deference to the neighborhood that lives downstream of
2 the denseness that's going to be put in up the hill.

3 MS. ROBESON: And when you say, "up the hill,"
4 just so I have this straight in my head, "up the hill" is,
5 it's running lower from the Silver Spring, it begins at the
6 Silver Spring and then --

7 MS. SAMIY: Runs past Cedar, all the way down --

8 MS. ROBESON: The grade, its gravity run down --

9 MS. SAMIY: Absolutely.

10 MS. ROBESON: -- towards Sligo Creek. Is that --

11 MS. SAMIY: Absolutely.

12 MS. ROBESON: -- what I --

13 MS. SAMIY: And I would --

14 MS. ROBESON: Okay.

15 MS. SAMIY: And I would say that I'm probably 100
16 feet, 50 to 100 feet lower on Bennington from where this
17 site is at Ellsworth and Cedar, so --

18 MS. ROBESON: Okay.

19 MS. SAMIY: -- plus the site has its own hill. I
20 also want to talk, I've reread a few times your remand
21 order, and I just want to be clear, and my comments are
22 really trying to relate back to what you talk about being
23 compatibility, and what is the intent and the meaning of
24 that word.

25 In your remand order, I read that you say, quote,

1 "The intent of the RT zone," quote, "gives maximum amount of
2 freedoms in the designing grouping," and explicitly says,
3 quote again, "to prevent detrimental effects to the use or
4 development of adjacent properties or the neighborhood, and
5 to promote the health, safety, morals, and welfare of the
6 present and future inhabitants." It goes on to say, quote,
7 "The fact that an application for RT zoning complies with
8 all specific requirements and purposes set forth herein,
9 shall not be deemed to create a presumption that the
10 resulting development would be compatible with the
11 surrounding land uses, and in itself, shall not be
12 sufficient to require a branching of the application."

13 For our community, this rezone adds too many
14 detrimental effects. The schematic should be revised to
15 respect the most vital of issues of concern to the residents
16 who live in the neighborhood.

17 And we, again, in your remand order, I saw the
18 word "deference" repeated a few times as it relates to the
19 meaning and the interpretation of the master plan. It
20 speaks to additional breaks in massing and more deference to
21 detached single family homes in the neighborhood. And it
22 also goes on to talk about flexibility and design that is
23 provided by the RT zone could result in a compatible
24 development. And you spoke again of more flexibility in the
25 plan being a compatibility consideration.

1 And I, we take this seriously. We thought that
2 that was a very thoughtful approach, and that the RT zone
3 allows that flexibility. But when we looked at the before
4 and after plans, the RT-15 and now the RT-12 plan, we don't
5 find it's really deferential to the surrounding homes, or
6 that it's really provided a flexible change. Reducing the
7 number of townhouses for us is not the same as reducing the
8 massing and density.

9 The townhouses had 20-foot alleys, balcony to
10 balcony before. They appear to have 20-foot alleys, balcony
11 to balcony in this plan. Other townhouses in communities
12 around the northwest Silver Spring master plan do not pack
13 in rows and rows of these alleys, especially at this
14 closeness. These other neighborhoods with townhouses have
15 back yards like our single family homes, but this project is
16 so dense and tightly packed, they have no room for fenced
17 back yards.

18 We live on public roads, but this commune of
19 residents will live on a privately-owned street. And the
20 townhouses will be four stories; our homes are two and three
21 stories. EYA has kept the long row of barracks. The first
22 plan took out the screen of trees. This plan takes it out
23 too. The old plan placed townhouses in road inside the
24 Riggs-Thompson parcel; the new plan puts townhouses inside
25 the historic parcel. The old plan opened a secondary exit

1 via private street through our sealed borders; the new
2 schematic plans a secondary exit into an unaligned sharp
3 intersection at the top of a steep hill. The unnecessary
4 secondary exit is in deference to the residents of the
5 townhouses; it's not in deference to those that live in the
6 detached single family homes that surround the 63
7 townhouses.

8 What else bothers us the most about this exit is
9 that it's seen by us as a park and a privilege, a selling
10 point, for a route to Dale and Wayne and 29, through the
11 quiet Pershing and Springvale streets. We feel that this is
12 a deference, should really be to the single family
13 homeowners on Springvale and Pershing who really don't want
14 any additional cars on their streets.

15 We protected and we limited the access to our
16 community over 20 years ago, and EYA wants to open that up.
17 And we feel that they're privilege of adding this private
18 street with a secondary access onto this northwest corner
19 violates that intent of that traffic restriction, which was
20 created to limit cars. This development will have full
21 access via Ellsworth to D.C., Maryland, the beltway, the
22 grocers. They can have access and it's a fast one, getting
23 right onto Cedar and 29, you can get anywhere. You can get
24 to the grocery stores.

25 So we also found out that it wasn't legally

1 required by the fire marshal or DOT, and we feel that
2 connectivity can occur by foot or a bike path, and not by a
3 new car path. We feel that the new car path into the
4 neighborhood violates the intent and purpose of the traffic
5 restrictions.

6 And I just want to point out that for us to get
7 that traffic restriction in place, I believe over 65 percent
8 of every single homeowner on the abutting and adjoining
9 streets had to agree to it. But with this rezone, the
10 neighborhoods don't have to do that; we have to go, it's a
11 different process. So we're here to ask that it not be
12 allowed.

13 I'm a bit concerned about what I heard on Friday
14 when I was here, so I've added this part of my testimony
15 because I heard EYA testimony about Mr. Greg Leck, Mr.
16 Leeves, and Bilgrami, who worked in Montgomery County
17 Transportation Division. They've apparently just recently,
18 in the last few days, told EYA, in through either a private
19 phone conversation or an e-mail, that the sharply-angled and
20 steep road at the Pershing/Springvale exit is permitted by
21 them, and they endorse it as EYA has planned it in this
22 scheme.

23 And I want to just tell you, I was very surprised
24 to hear that. This is the exact opposite of what they told
25 myself, John Millson, and Peter Perenyi when we met with Mr.

1 Leeves and Mr. Bilgrami on January 20th. We had gone to
2 meet them to talk about our traffic restrictions, and we
3 were surprised they came to the meeting holding a copy of
4 EYA's schematic. And they said to us, "We can't approve
5 this. The road is too close to the corner, and it needs to
6 be moved 50 to 100 feet away from the intersection. And we
7 prefer T intersections and roads that are located away from
8 steep grades and intersections."

9 And I just wondered why this change. It was a big
10 change from what we were told. We were actually pleased
11 that there might be some guidelines that they follow for
12 these T intersections, and actually, it reminded me of when
13 they, we met two years ago on the Dale/Colesville
14 intersection because we had a big meeting with all these
15 head honchos from DOT, and that was why they said they were
16 going to spend that \$1.4 million, was they wanted to align
17 that road as a T intersection. They said, "That's our
18 policy and we're doing it anywhere and everywhere we can,
19 and that's what we want the future of our roads to look
20 like. We feel it's really important." But for some reason,
21 all of a sudden, they're not following it for this new
22 rezone plan; they're saying they'll approve it as is. So
23 for what it is, I was just surprised.

24 MS. ROBESON: I have a question on your privilege
25 argument. I mean, it's not keeping, that road is not

1 keeping the rest of the community from going anywhere, I
2 mean, it's not restricting the movements of the rest of the
3 community, is it?

4 MS. SAMIY: No, it's, at best the "T" will have
5 the same restrictions it currently has.

6 MS. ROBESON: Right. So why is it a privilege for
7 the new residents? That's where I'm getting confused.

8 MS. SAMIY: Because it's not required. It's a
9 perk, it's an extra benefit to their residents.

10 MS. ROBESON: Oh. You're saying it should be the
11 minimum necessary.

12 MS. SAMIY: Yes.

13 MS. ROBESON: Okay. I understand what you're
14 saying. I'm not sure I agree, but --

15 MS. SAMIY: That's okay.

16 MS. ROBESON: Go ahead.

17 MS. SAMIY: It's, I think what it also is, for me,
18 is that the neighborhood, for so long, wanted to limit any
19 ingress into the neighborhood. They sealed those --

20 MS. ROBESON: Now, that, I understand.

21 MS. SAMIY: They sealed those borders. So --

22 MS. ROBESON: That, I understand.

23 MS. SAMIY: -- the ability of the developer to
24 come in and then open that hole in the dike, which I've
25 testified to several times --

1 MS. ROBESON: I, okay.

2 MS. SAMIY: This is the hole in the dike
3 privilege, really, to me.

4 MS. ROBESON: Okay.

5 MS. SAMIY: It's really related to that hole in
6 the dike.

7 MS. ROBESON: So it's not necessarily that they
8 shouldn't have just one intersection; it's that you're
9 opening, they're opening up a possibility of subverting the
10 traffic restrictions.

11 MS. SAMIY: Yes. Yeah.

12 MS. ROBESON: Okay.

13 MS. SAMIY: It's not --

14 MS. ROBESON: I get it.

15 MS. SAMIY: -- It's not privilege for the sake of
16 privilege --

17 MS. ROBESON: Yes, all right.

18 MS. SAMIY: -- or any means by that, or --

19 MS. ROBESON: No, that's fine.

20 MS. SAMIY: -- for any other reason. I think, for
21 me, it's about the hole in the dike, and how, for so many
22 years, people have tried so hard to limit the traffic and
23 keep it --

24 MS. ROBESON: Right.

25 MS. SAMIY: -- a quiet neighborhood. And any,

1 there's no holes in or out.

2 MS. ROBESON: Right.

3 MS. SAMIY: And so it feels that it's deferential
4 to the townhouse community in allowing that exit at that
5 location.

6 MS. ROBESON: Okay. Now, I understand. I figured
7 I was missing something, but I wasn't --

8 MS. SAMIY: I'm not always that clear.

9 MS. ROBESON: -- sure. Okay.

10 MS. SAMIY: So that's sort of -- the other thing
11 that Mr. Leeves and Bilgrami said is, "The second exit was
12 not required, that the policing was unenforceable," which
13 you also heard, "and traffic signs would also --

14 MS. ROBESON: Who said that?

15 MS. SAMIY: Mr. Bilgrami and Mr. Leeves both told
16 us that day on January 20th, that any --

17 MR. HARRIS: Objection.

18 MS. SAMIY: -- signs --

19 MR. HARRIS: Now, we're really getting into
20 hearsay testimony here that, that DOT has written two
21 letters on this, neither of which says that, neither of
22 which says they prefer a T intersection.

23 MS. ROBESON: Well, they don't address it, right?

24 MR. HARRIS: They don't address that. And this is
25 just, is unreliable.

1 MS. ROBESON: I'll let it in for the weight it
2 deserves.

3 MR. HARRIS: Okay.

4 MS. SAMIY: I'm telling you what they told me --

5 MS. ROBESON: Yeah.

6 MS. SAMIY: -- and what my notes that I wrote that
7 day said.

8 MS. ROBESON: Okay. That's fine.

9 MS. SAMIY: It's not speculation. I wrote what
10 they said, and it's in my notes. So they said, "It was
11 unenforceable, policing on a private road." They said,
12 "Signs on a private property will not be enforceable." And
13 I want to follow up by saying that Mr. Greg Leck was invited
14 to the meeting we had that day at, in January 20th, but he
15 couldn't, was too busy to come; and that subsequently, that
16 day, I wrote him an e-mail and asked for a meeting, and
17 others that met with him, and others on our committee also
18 asked to meet with him, and we attempted to further
19 meetings, but he didn't respond to those requests. So
20 again, back to my surprise. We had difficulty getting
21 through to him, but EYA was able to.

22 I have a few, two closing comments. One is that
23 we feel that EYA has not yet proven or provided a flexible
24 or compatible plan, one that is really deferential to the
25 surrounding neighborhood; and that the first step to

1 achieving this would be preserving the site trees, the
2 canopy and the root systems, producing a plan with only one
3 access point off Ellsworth, reducing the massing and density
4 of the townhouses that are packed on the 3.85 acre, the
5 lower parcel, which has too much impervious surfaces within
6 that area, to limit the total number of units with excess
7 toilets that overburden the sewer system, to ensure there is
8 enough green land on the lower elevations to absorb
9 stormwater so it recycles on its own land, and to keep
10 intact the historic 1.4 acre parcel without building any
11 townhouses inside its boundary.

12 I have one last closing comment that I'm adding as
13 the president of the association because it's, last year, we
14 worked with the First Baptist Church developer in downtown
15 Silver Spring, and we negotiated many binding elements, I
16 think there were five or six. But the developer and the two
17 neighborhoods, ours and east Silver Spring, decided that the
18 best way for trust to be built between the two groups was in
19 case anyone reneged on what those plans were during the,
20 because it was so concept design through the whole process
21 until built and finished, that there would be an escrow fund
22 set aside for a legal defense. And the developer would put
23 the money into the escrow fund so it would ensure that if
24 they did renege on any of those binding elements, that the
25 developer would help to fund, because it's very burdensome

1 on neighborhoods to try and fight developers to hold them
2 accountable to promises made, promises broken, changes
3 happening in process.

4 So we took this approach and actually, we never
5 ever got close to this stage. We negotiated with that
6 developer in our living rooms. It was a very long process.
7 It took a year and a half. There was a lot of give and
8 take. But the developer and the neighbors built a lot of
9 trust because they did meet in each other's homes, and they
10 did come to a mutually compatible tradeoff. There was a
11 tradeoff in heights, there was a tradeoff in setbacks, there
12 was a tradeoff in egress, there was a tradeoff in green
13 space. And it was really a beautiful thing that happened.

14 And it was interesting to note that concurrent to
15 that concluding, this project came along and we've now been
16 through two rounds. And I just think that the escrow
17 account, or meeting in homes and living rooms, and talking
18 directly between the developer and the neighborhood, and to
19 work out and make changes that are conducive to the
20 neighborhood is a good way to go. And it worked in that
21 case.

22 So anyway, thank you. Thank --

23 MS. ROBESON: Thank you. Mr. Harris?

24 MR. HARRIS: Ms. Samiy, I think you started out by
25 saying that -- and I didn't catch the exact wording, that

1 the residents of the neighborhood oppose this. I think
2 you'd agree with me that there are many residents who
3 support the application as well, aren't there?

4 MS. SAMIY: I think a very small percentage of the
5 residents in our community support your development, and a
6 very large majority, over several hundred people, believe
7 that it's too massive and dense for this site.

8 MR. HARRIS: You were talking just now, a moment
9 ago, about your negotiations and discussions with the
10 developer, the First Baptist Church. I think you'd agree
11 with me that EYA and I started out with the community, maybe
12 two years ago or so, talking about this, trying to work
13 through issues with you, didn't we?

14 MS. SAMIY: We actually found that you've not
15 moved very far from the first day you presented to us, and I
16 was there, and I haven't seen really a dramatic change in
17 what you presented on the first time around.

18 MR. HARRIS: Do you now support RT zoning on the
19 property?

20 MS. SAMIY: Personally --

21 MR. HARRIS: Yes.

22 MS. SAMIY: -- I think townhouses at this site
23 would be fine. I think they should be at a six-per-acre or
24 an eight-per-acre maximum. I think anything more than that
25 doesn't fit the lay of this land. I think if we walked it

1 and talked about it in site instead of on paper, we could
2 find a beautiful, compatible development that would be nice
3 in townhomes here.

4 MR. HARRIS: Do you believe Mr. Doggett's plan
5 that is up there on the easel showing townhouses, is that
6 appropriate?

7 MS. SAMIY: To be honest with you, I don't like
8 the barracks, and I don't like the alignment of the long
9 strings. And I, frankly, think he did a phenomenal job with
10 what he was presented with, trying to keep some of what you
11 were asking and what some of the community wanted, but I
12 don't think it goes far enough to protecting the trees, and
13 I still think it's got too many townhouses on the lower
14 elevation below the 1.4 acre site.

15 MR. HARRIS: We met a number of times with SOECA,
16 you invited us to several meetings, at least two that I
17 recall, where we met and then some informal meetings with
18 the task force. When we got, after the remand, we met with
19 a small group of you, but we were never invited back to
20 SOECA as a whole to present our plan, were we?

21 MS. SAMIY: I'm sorry. You lost me with the --

22 MR. HARRIS: After the remand, was EYA invited
23 back to SOECA, as they had been early on, to present instead
24 the new plan?

25 MS. SAMIY: The task force met with them, under

1 the remand order, the task force and the developer were to
2 meet with each other, and so there was no need to bring it
3 back to the residents at that point. The task force was
4 tasked to meet with the developer, and they met in your
5 office. Actually, we were, we danced your tune, date, time,
6 location.

7 MR. HARRIS: Correct, back in November that was, I
8 believe, right?

9 MS. SAMIY: I wasn't there. It was only limited
10 to three people.

11 MR. HARRIS: Okay. And I think you just said that
12 the association, as a whole, never met again to talk about
13 the revised plan?

14 MS. SAMIY: The neighborhood?

15 MR. HARRIS: SOECA.

16 MS. SAMIY: You did, never, you never came back to
17 present the new plan. We, it was presented to the task
18 force who was tasked to lead and be on top of all the
19 complex details of the legal case.

20 MR. HARRIS: Correct. And did the full SOECA
21 organization meet again to discuss this plan? And if so,
22 when?

23 MS. SAMIY: We've had updates from the Chelsea
24 task force throughout the, every meeting that we have, they
25 give us an update on the status of the legal process.

1 MR. HARRIS: But we've not been invited to any of
2 those meetings?

3 MS. SAMIY: No. Actually, you know, you were at
4 many, many of our meetings, and we talk about it every
5 meeting. And we have many other things we would prefer to
6 talk about.

7 MR. HARRIS: Did you support the first Doggett
8 plan?

9 MS. SAMIY: I didn't, wasn't here for that
10 testimony, and actually, I didn't see it.

11 MR. HARRIS: Didn't SOECA present Mr. Doggett as
12 their witness to show how the site should be developed?

13 MS. SAMIY: Yeah.

14 MR. HARRIS: And so SOECA supported that plan even
15 if you didn't personally.

16 MS. SAMIY: Yes.

17 MR. HARRIS: And that plan was going to take out a
18 considerable number of trees on the property, wasn't it?

19 MS. SAMIY: I don't know how many trees it was
20 planned to take out.

21 MR. HARRIS: The stormwater and sewer issues about
22 which you spoke, you seemed to intermingle the two, and I
23 want to separate them a bit. Do you understand they are two
24 different systems? There's a stormwater system and there's
25 a sanitary sewer system.

1 MS. SAMIY: Absolutely. I'm very familiar with
2 the two.

3 MR. HARRIS: Okay. And you were referring to some
4 sort of a WSSC order. Which did that concern? Stormwater
5 or --

6 MS. SAMIY: Sewage. MR. HARRIS: Sewage. And
7 do you have that order with you?

8 MS. SAMIY: I do not.

9 MR. HARRIS: Could you possibly provide it to me
10 because I've not seen that?

11 MS. SAMIY: I haven't seen it myself, but my
12 neighbor who does the blogging on the action log is the one
13 that told me about it, and I'm sure it can be, a copy can be
14 had through the Montgomery County Department of
15 Environmental Protection.

16 MS. ROBESON: Is that Ms. Bissell back there?

17 MS. BISSELL: That's Ms. Bissell.

18 MS. ROBESON: She's waving a paper. Do you have a
19 copy of it?

20 MS. BISSELL: I have, I don't know if I'm allowed
21 to speak though. I have a copy of what EYA submitted before
22 the first Planning Board meeting.

23 MR. HARRIS: No, that's not that.

24 MS. ROBESON: Well, I think Mr. Harris is looking
25 for the WSSC consent order.

1 MS. BISSELL: Well, let me just get this to you.
2 When the report was written --

3 MS. ROBESON: What report? The staff report?

4 MS. BISSELL: The report after the five hearings.
5 You said that the issue of stormwater had been brought up,
6 but you labeled it speculative because you didn't find
7 anything in the file. And so I haven't checked to see
8 whether this was in the original file, but it's exactly what
9 you're talking about. It's the comments from WSSC.

10 MS. ROBESON: Mr. Brown, do you --

11 MS. BISSELL: It has a second page that talks
12 about this decision. So should I check with your assistant?

13 MS. ROBESON: No. No.

14 MR. HARRIS: I don't see anything in this that
15 talks about a consent order. What I do see is that it says,
16 "The impact on this property will be negligible with respect
17 to water, and that the impact from rezoning this property
18 may possibly require the replacement of existing downstream
19 local sewers for sewer capacity augmentation purposes."
20 That's all it says.

21 So I'm trying to find out, Ms. Samiy, where this
22 allegation comes from, and I'd like a lot more detail on it,
23 because I'm not aware of it.

24 MS. ROBESON: All right. What exactly is your
25 testimony? Is your testimony that there has been overflows

1 and the WSSC --

2 MS. SAMIY: 100,000 gallons of sewage in the
3 Bennington tributary that comes up in front of my house.

4 And it's --

5 MS. ROBESON: Okay.

6 MS. SAMIY: -- the water there is on the action
7 log. It's been, an action log --

8 MS. ROBESON: What action log?

9 MS. SAMIY: The Friends of Sligo Creek has a page
10 on their website called the Bennington tributary. The
11 Bennington tributary has a date, time, and it describes the
12 color, the pollution, the snow, the quality of the water in
13 the tributary. Every single time there's illicit discharge
14 up the hill that runs sewage or dirty water into that creek
15 outfall, it's not every time, but as many as possible, that
16 the residents who live on the street can add to it, and
17 there have been several recently that --

18 MS. ROBESON: But what about the consent order?

19 MS. SAMIY: Okay. The consent order comes from
20 about three or four years ago, 100,000 gallons was dumped
21 illicitly, and they tracked it and traced it and found the
22 source. And so this, I believe it's the City Place
23 managers, or the property up there, or someone in that
24 vicinity, or maybe I think it's that tall apartment
25 building, have been put on order that their, because their

1 laundry facilities were overflowing, and it was getting into
2 the stormwater system. So sewage and laundry and other
3 things were getting into it.

4 MS. ROBESON: But that consent order was with a
5 particular property.

6 MS. SAMIY: It was, when they tracked that huge
7 discharge, spill --

8 MS. ROBESON: Well --

9 MS. SAMIY: -- they discovered it was happening
10 more routinely, and therefore, the area is under this
11 consent decree to be mindful of these problems. And I have
12 seen a copy of that sewage map, because I use to have lots
13 of conversations with the sewer people, and --

14 MS. ROBESON: I think what Mr. --

15 MS. SAMIY: -- it's just not --

16 MS. ROBESON: -- Mr. Harris is looking for is the
17 WSSC consent order, because there's, you know, there can be
18 a consent order with Montgomery County, there can be a
19 consent order with the property owners. And I'm not sure
20 that the consent order with the property owners of City
21 Place would necessarily impact this development.

22 MS. SAMIY: But the sewage system, which is a very
23 small pipe, it's not been upgraded --

24 MS. ROBESON: Right.

25 MS. SAMIY: -- in size, is of issue because this

1 development will connect to that.

2 MS. ROBESON: Okay.

3 MS. SAMIY: And it's not been upgraded.

4 MS. ROBESON: Okay. All right.

5 MR. HARRIS: But I hear nothing that says the
6 consent order says the pipe is undersized; what it says is,
7 is that the apartment building can't be dumping stuff into
8 the sewer or into the storm drain.

9 MS. ROBESON: Well, I thought you said --

10 MS. SAMIY: None of us really --

11 MS. ROBESON: -- you just didn't know where the
12 consent --

13 MR. HARRIS: No, that's what I'm understanding
14 from her comments.

15 MS. ROBESON: Oh, oh.

16 MS. SAMIY: I'm saying there's a consent decree.
17 I'm not speaking to exactly what this consent decree states,
18 and who it's bound to; I'm saying that it's, that consent
19 decree exists because of all the illicit and dirty water
20 that runs into the creek that's downhill.

21 MR. HARRIS: Okay. So it, but it doesn't have
22 anything to do with this, the Chelsea property today,
23 correct?

24 MS. SAMIY: I can't answer that.

25 MR. HARRIS: Okay. And what -- well, never mind.

1 Still on sewage, are you aware that the 220-unit project
2 that you mentioned, the Citron, has been approved and is
3 under construction? They would have had to go through
4 detailed permitting with WSSC, wouldn't they?

5 MS. SAMIY: Yes, they would.

6 MR. HARRIS: And so they must have proven that
7 either the system is adequate or that they were going to
8 improve the system to satisfy their demand, isn't that
9 correct?

10 MS. SAMIY: I would hope so.

11 MR. HARRIS: And so there is no evidence that the
12 system will not be adequate for this project.

13 MS. SAMIY: There is no evidence either way at
14 this point.

15 MR. HARRIS: In any respect, as Ms. Robeson
16 mentioned, you are aware that this project will have to go
17 through the same permitting and approval process that the
18 Citron did, and would not be able to be built if it didn't
19 conform with WSSC requirements?

20 MS. SAMIY: I would hope so.

21 MR. HARRIS: And with respect to stormwater, the
22 current Chelsea School site has no stormwater management
23 controls on that property today, does it?

24 MS. SAMIY: I don't know what stormwater
25 management it has. I've seen a historic plat, and it

1 defines the lower corner as the stormwater management area
2 on that part, so a more flatter part of the site. And the
3 site is mostly green, so it doesn't have a lot of impervious
4 surface except for the parking lot that they, Chelsea School
5 added. So I would expect there's probably a lot water being
6 absorbed into the land, because there's no buildings on it.

7 MR. HARRIS: And you're aware that the, before
8 this project could go forward, we would have to meet all of
9 the applicable stormwater management requirements including
10 controls on site? Are you aware of that?

11 MS. SAMIY: I'm not aware of all the rules, but I
12 would hope that that would be the case.

13 MR. HARRIS: And so wouldn't you agree with me
14 that by installing stormwater systems on the property, we
15 would actually improve the system, improve the runoff
16 conditions?

17 MS. SAMIY: I'm not sure. I mean, I think that
18 the future of runoffs is to try and get the, the water
19 recycled on the site and not have any runoff at all. And I
20 think by limiting impervious surfaces on those sites to a
21 reasonable massing and density, there'll be more green space
22 to absorb that water at the site with no runoff.

23 MR. HARRIS: Are you familiar with the term, ESD,
24 environmental site design?

25 MS. SAMIY: No.

1 MR. HARRIS: So you don't know what the stormwater
2 management requirements are for a project like this?

3 MS. SAMIY: No.

4 MR. HARRIS: With respect to DOT and their review
5 of access points, DOT never said that this project could not
6 access Springvale Road, did it?

7 MS. SAMIY: Say that again.

8 MR. HARRIS: DOT has never said that this project
9 cannot gain access to Springvale Road.

10 MS. SAMIY: I don't know if they've ever said that
11 or not.

12 MR. HARRIS: Do you have any letter which says
13 that?

14 MS. SAMIY: I do not.

15 MR. HARRIS: On what basis did you meet with Greg
16 Leck and K.B.? Wasn't it in response to a memo that had
17 been sent out that was proposing the location of the
18 Springvale Road further to the west?

19 MS. SAMIY: No. Actually, we've never met with
20 Greg Leck. I've never met him.

21 MR. HARRIS: Oh, okay, with K.B.?

22 MS. SAMIY: We met with K.B. because K.B. does
23 the, he did our traffic calming project on Ellsworth Drive
24 and we have a very good working relationship with him. He
25 helped us reduce the speeding cars, and he added bump-outs

1 and signage for us. And what we discovered in the last
2 couple months in our neighborhood is that one of the signs
3 on Dale Drive at Greenbrier that's a "No Left Turn" was
4 inadvertently taken out when they did that construction, and
5 that because of that, Wayne Avenue drivers were cutting
6 through Greenbrier to turn left on Dale to get to the
7 beltway faster. And we felt it was really important that we
8 meet with him and talk to him about that, and review the
9 traffic restrictions for our neighborhood. So we went there
10 under that initial premise to --

11 The other thing that happened is that a sign on
12 Pershing was removed and by someone. It was "No Parking"
13 sign and the neighbor called and asked DOT to replace the
14 sign. And when they came out, they reviewed the traffic
15 restrictions and one of the staffers inadvertently put in
16 "Do Not Enter" signs on a portion of Cloverfield Drive at
17 Lumina Theater, and so we were meeting with him to rectify
18 the problem and be sure that 1993 traffic orders were in
19 full compliance.

20 MR. HARRIS: So you made him quite knowledgeable
21 about circumstances in the community, requirements and
22 conditions?

23 MS. SAMIY: I think he already knew a lot about
24 our neighborhood. He works there on a pretty regular basis,
25 and he knows a lot of our residents.

1 MR. HARRIS: And so if he were to approve an
2 access point to Springvale, it's with sound information
3 about the community traffic conditions?

4 MS. SAMIY: Actually, we learned he doesn't
5 approve road access; he's the guy that deals with the
6 problems after the road access problems come up. They are
7 the ones that basically end up with the burden of solving
8 the problems that happen. And he said, for instance, Mr.
9 Leeves said, that in White Flint, for instance, because the
10 residents have these problems, the same issues we're talking
11 about right here, they're now putting in gated communities
12 and fenced-in places so that there aren't these issues. And
13 he actually made some suggestions of what your development
14 could be doing at the entrance to Ellsworth, including a
15 gate, or a key card, or a one-road only, so that they are
16 not actually burdened after the fact with problems that
17 aren't solved up front in this development.

18 MR. HARRIS: Do you have anything in writing from
19 him?

20 MS. SAMIY: No.

21 MR. HARRIS: If we, if our witnesses later will
22 testify that Mr. K.B. -- and I can't pronounce his name --
23 so he goes by --

24 MS. SAMIY: His name is Bilgrami, K.B. Bilgrami.

25 MR. HARRIS: Yes. Okay. Bilgrami. If Mr.

1 Bilgrami was in the meeting, series of meetings with us to
2 review the access point, and was there side by side with
3 Greg Leck, and it was on the basis of his evaluation, along
4 with Greg Leck's, that the issue, the e-mail last week
5 approving the access point, you would have to then agree
6 that that was with, then the DOT had good knowledge of the
7 conditions when they approved that.

8 MS. SAMIY: All I'm saying is --

9 MS. ROBESON: Why don't you just introduce that
10 testimony.

11 MR. HARRIS: I'm trying -- okay. So much of what
12 she has said is completely different than what they've told
13 us, that I find it hard to believe.

14 MS. ROBESON: I understand that, but asking her --

15 MR. HARRIS: All right. Just so I can check with
16 K.B., he told you that they prefer a T intersection?

17 MS. SAMIY: He said the division of traffic
18 prefers T intersections, and that's their preferred approach
19 to any new roads, always creating T intersections. He said
20 that's the, not him, but the department.

21 MR. HARRIS: And -- okay.

22 MS. SAMIY: He also said that it's not him and Mr.
23 Leeves that approves any subdivision, it's Mr. Greg Leck who
24 reviews subdivision.

25 MR. HARRIS: And so if Greg Leck says it's okay,

1 then it's okay?

2 MS. SAMIY: Apparently.

3 MR. HARRIS: Ms. Samiy, do you obey the traffic
4 restriction signs in your neighborhood today?

5 MS. SAMIY: The only one I violate sometimes until
6 I learned from my neighbors, Peter Perenyi, that I was
7 misreading that sign at Ellsworth and Cedar, because I used
8 to go straight up to that light, and until I became head of
9 the association, I was not aware that I was only supposed to
10 go right, so no, I actually went around that time.

11 MR. HARRIS: Okay. But now, you --

12 MS. SAMIY: Along with many others, I've
13 discovered.

14 MR. HARRIS: Now, you obey the signs?

15 MS. SAMIY: Absolutely. Absolutely.

16 MR. HARRIS: And if there were signs into this
17 property that said that no trespassing and/or no turn in,
18 would you obey those signs?

19 MS. SAMIY: Absolutely.

20 MR. HARRIS: And when you were told, another thing
21 that K.B., I think you said told you that, was that signs
22 are not enforceable on, signs to or from private property
23 are not enforceable?

24 MS. SAMIY: Yes.

25 MR. HARRIS: Okay. Did you hear the testimony

1 earlier today about the law allowing for enforcement where
2 the executive, where an executive order is issued?

3 MS. SAMIY: Yes, I did.

4 MR. HARRIS: And might it have been that K.B. was
5 not aware of that?

6 MS. SAMIY: I don't know.

7 MR. HARRIS: I have nothing further, Ms. Samiy.
8 Thank you.

9 MS. ROBESON: Thank you. Mr. Brown, do you have
10 any followup questions?

11 MR. BROWN: No questions.

12 MS. ROBESON: Thank you, Ms. Samiy.

13 MS. SAMIY: Thank you.

14 MR. BROWN: The last witness is Anne Spielberg.

15 MS. ROBESON: Okay. Ms. Spielberg, I definitely
16 know you were here Friday. You're still under oath. Please
17 state your address for the record.

18 MS. SPIELBERG: I'm Anne Spielberg, and I reside
19 at 606 Greenbrier Drive in Silver Spring, which is a few
20 blocks from the Chelsea School site. I am a member of the
21 Seven Oaks Evanswood Citizens Association, and I've been
22 chair of the association's task force on the proposed
23 redevelopment of the Chelsea School property for the past
24 two years.

25 I have some prepared remarks, but I'd just like to

1 address a couple of things that have come up. Recently, one
2 is that Mr. Harris was asking Ms. Samiy questions about
3 EYA's presentation to SOECA on remand, and I was present at
4 that meeting, the meeting of the task force. And it was
5 made very clear that it was being presented to us as what
6 they were going to submit. And that while we had
7 suggestions about changes that would be made, that this was
8 the plan that was going in. So there was no discussion
9 about some of the key points that we think are at issue
10 here.

11 In my testimony today, I would like to address
12 that portion of the remand order that directed that the
13 schematic development plan be reconfigured to propose a
14 residential townhouse development with less density, so that
15 it will be more compatible with the character of the
16 transition from the Silver Spring central business district
17 to the residential community north of Cedar Street, and more
18 consistent with the 2000 North and West Silver Spring master
19 plan.

20 In discussing the issue of density, the District
21 Council, in its remand decision, at page 10, indicated that
22 in looking at compatibility, it is important to mark the
23 distinction between the high intensity multi-family uses on
24 the south side of Cedar Street, in the central business
25 district, and the older, smaller, single family homes

1 immediately north of Cedar Street.

2 As the District Council found, the density,
3 massing, and scale of the rows of townhouses must relate to
4 the smaller, older single family detached homes surrounding
5 the property that define the character of this area north of
6 Cedar Street. And in its decision, the District Council
7 noted and was building on findings of you, the hearing
8 examiner, that the existence of Colesville Towers, which
9 dates from the 1960s, and has an outlier on the edge, and
10 the Springvale Retirement Home, which is a special
11 exception, and with a low impact use, did not change the
12 basic nature of the character; and that what we were looking
13 at is these older single family detached homes. That is
14 what is relevant in terms of addressing compatibility.

15 Simply proposing a development at the next highest
16 townhouse density, RT-12.5, to that previously proposed, as
17 EYA has done, does not comply with the District Council's
18 decision, nor is the relevant test, as EYA submits, that the
19 density has been reduced by a small percentage from that of
20 the prior application. The prior application was rejected,
21 and using that too-high density as the baseline for
22 comparison is completely misleading, and I believe makes the
23 remand meaningless. Instead of looking backwards at the
24 density of a rejected application, a test must be a real
25 assessment, as the District Council directed, of where the

1 site is located, the surrounding properties, and the
2 planning principles of the master plan.

3 The North and West Silver Spring master plan
4 emphasizes, at page 15, the importance of maintaining,
5 preserving, and enhancing the existing neighborhood, such as
6 one where the Chelsea sit sits. The master plan looks at
7 how best to preserve the character and stabilize the edges
8 while protecting the interior of the neighborhoods. The
9 master plan chose, as the means for protecting this, the
10 interior at this site, to allow the Cedar Street homes to
11 apply for use as nonresident office special exceptions
12 within the R-60 zone.

13 As you had mentioned in earlier questioning, the
14 master plan emphasizes that transition here as by use and
15 not by structure. As I testified at the last set of
16 hearings, for the four out of the nine Cedar Street homes
17 that have special exceptions, the rest are still single
18 family uses, single family residential homes, all the
19 decisions emphasize the importance of keeping those single
20 family detached structures.

21 Also, where townhouses are recommended as a
22 possibility in the master plan along Georgia Avenue, the
23 master plan, again, cautions about protection of the
24 interior blocks. So in looking at the proposed townhouse
25 development here, and whether it is appropriate at this

1 density, and compatible with the surrounding neighborhood,
2 it is critical to look at the location of the site in
3 relation to these master plan principles.

4 EYA's proposed development here will take place on
5 a site that is outside of, and nowhere adjoins, the Silver
6 Spring central business district. As previous testimony in
7 this case established in the last set of hearings, the
8 master plan contemplates that a high density residential
9 development will occur in the CBD. While townhouses will be
10 built on the Chelsea site, it is important to remember that
11 the site remains completely surrounded by R-60 zoning.

12 The one difference, which I'm sure Mr. Harris will
13 point out, is the site next to the library, which has the
14 park, is RT-12.5, it's only half the site, and it is used as
15 a park, and there is no question that it will continue to be
16 used as a park. The site is surrounded on three sides by
17 single family detached houses at a density of six per acre.
18 The site where the development will occur remains interior
19 to the neighborhood and only accessed by interior
20 neighborhood streets. It does not sit on a major highway,
21 an arterial road, a commercial road, or even a primary
22 residential street, and those are all specifically
23 identified in the master plan.

24 The site is already behind an existing transition
25 of the Cedar Street single family detached houses, and the

1 townhouse development will occur between those homes and the
2 similar single family detached homes on Springvale Road.
3 The District Council found that an additional transition was
4 not necessary at this place, at this site.

5 Looking at the surrounding properties, I believe
6 that it is clear that a revised application which proposes
7 rezoning to RT-12.5 with 63 townhouse units and one single
8 family detached home would continue to result in a density
9 for the Chelsea School property that remains inappropriate
10 for the site, and significantly out of proportion to the
11 density of these existing surrounding homes which define the
12 character.

13 With a density of 12.19 per acre, if the density
14 is measured over the entire 5.25 acres, the density of the
15 proposed development is more than two times the density of
16 the surrounding homes. If, as is more appropriate, and as
17 reflects the true density of how the site will be developed,
18 the density is measured excluding the 1.4 acre Riggs-
19 Thompson parcel on which development cannot occur, the
20 density is 16.36 per acre. or two and a half times the
21 density of the surrounding homes. This level of density
22 does not reflect an appreciable reduction from the three-
23 fold increase in density that was previously rejected by the
24 District Council.

25 The continuing compatibility of the revised

1 schematic development plan can also be seen by looking at
2 the densities of other townhouse developments in our
3 community, in North and West Silver Spring, as previous
4 testimony has established. Even if the entire Riggs-
5 Thompson parcel is counted for density purposes, the density
6 is higher than every single other townhouse development in
7 that area. And we must remember that each of those
8 townhouse developments sits either on a major highway or
9 directly abuts the Silver Spring business district. It
10 makes no sense, and it is not compatible to have the
11 townhouse development here on an interior neighborhood site,
12 surrounded by RT properties, and only accessed by interior
13 neighborhood streets, to be at the highest density within
14 this entire area.

15 What would be much more appropriate is a density
16 level such as that of the Woodside Way townhouse development
17 that was testified to previously. This development is
18 located on 16th Street, which is identified as a major
19 highway, and on Second Avenue, characterized as an arterial
20 road. The property is roughly similar in size to that of
21 the Chelsea site. It's 4.58 acres. It is zoned RT-8. It
22 has 27 townhouses for an effective density of just under
23 six.

24 Even several townhouse developments sitting on
25 Georgia Avenue, another major highway, have densities around

1 nine per acre. These levels of density are much more
2 appropriate for the Chelsea site in its relation to the
3 surrounding R-60 properties. I won't go into the other
4 townhouse developments, which were outside of the
5 neighborhood, because it's, other people have addressed
6 that, and I don't think they're relevant here.

7 I urge you to reject this continuing attempt to
8 pack the site as tightly as possible, disregarding
9 compatibility with our neighborhood. Lower RT zoning is
10 available within the zoning code, and lower density can be
11 achieved, such as RT-8 that makes sense for an interior site
12 surrounded by R-60 homes.

13 What was proposed by Mr. Doggett, which was
14 originally 48 townhouses, and which he testified he would
15 reduce further to address the massing, by taking out center
16 townhouses and staggering them. Also, a cul-de-sac is used
17 by taking out some townhouses there. That is a much more
18 appropriate density level. Automatically approving RT-12.5
19 to maximize density effectively makes the other RT zones and
20 zoning codes superfluous.

21 Importantly, a lower appropriate density would
22 provide the flexibility the site needs to address critical
23 issues that others have been discussing in their testimony,
24 such as protecting the full 1.4 acre parcel, which was P-73,
25 allowing sufficient space for a cul-de-sac, which would

1 address, which would prevent the cut-through traffic
2 problem, allowing more creative grouping of townhouses to
3 break up the massing, it also would allow protection of more
4 trees, and retain the ability to screen the views of the CBD
5 and Colesville Towers with those trees, which was mentioned
6 by the District Council as being important, and would cut
7 down on parking overflow which may result from tandem
8 parking that will go on by some residents if their garages
9 are not wide enough because of the size of the units, and
10 for the three townhouses that do not have garages.

11 It is that flexibility of design which allows
12 grouping and consolidation that the District Council found
13 was the reason that RT zoning is appropriate for this site.
14 Any development here must use the enhancements that RT
15 zoning is supposed to produce to address compatibility with
16 the neighborhood. That flexibility cannot be achieved
17 unless the density is reduced.

18 I therefore urge you to reject this revised plan
19 as failing to conform with the District Council's remand
20 order, and to recommend that EYA propose a plan with lower
21 density that is compatible with the neighborhood, and does
22 not overwhelm it, as the District Council directed.

23 MS. ROBESON: Thank you. Any follow-up questions,
24 Mr. Brown?

25 MR. BROWN: Just one question. Ms. Spielberg, if

1 you know, do you know whether or not at an RT-8 level of
2 zoning, the applicant would be able to achieve a comparable
3 number of MPDUs on the site to what they have at the current
4 RT-12.5?

5 MS. SPIELBERG: My understanding is that if they
6 take advantage of the density bonuses, that they can achieve
7 somewhere between, I mean, I think at least seven, and they
8 can possibly even achieve eight MPDUs at RT-8, between six
9 and eight, depending on how they do the density bonuses.

10 MR. BROWN: Nothing further.

11 MS. ROBESON: Okay. I have a few questions. I
12 think what I'm hearing you say, but correct me if I'm wrong,
13 is that you feel an RT-8 density would be -- I can't figure
14 out if it's just the overall density that's bothering you,
15 or it's the configuration of the long rows.

16 MS. SPIELBERG: Well, the overall density does
17 bother me. I think it is too dense for the site. I think
18 it packs the site. I do have problems with the long rows as
19 well, and I think to address those kinds of issues, you have
20 to reduce the density. But I do think that that level of
21 density of 63, it's higher than anything else in North and
22 West Silver Spring, and that's, that is inappropriate for
23 the site and given what's across the street and surrounds
24 it.

25 MS. ROBESON: Well, let me ask you about the rows

1 for a minute. Can you grab the model, Mr. -- around. Okay.
2 Just --

3 MR. THAKKAR: Whoops.

4
5 MS. ROBESON: Oh, gee. Oh, my golly. You got me.
6 I would have let it go.

7 MR. THAKKAR: That's why we didn't want to submit
8 it.

9 MS. ROBESON: I don't know how much it costs, but
10 I know the county doesn't have any money. What if, assume
11 for a moment, all right, that you could not see the full way
12 down the line of townhouses, just assume that your view
13 would be blocked by a combination of screening and
14 landscaping. Would that change your opinion?

15 MS. SPIELBERG: Of this? I'm sorry. I'm not sure
16 I understand the --

17 MS. ROBESON: Assume you had -- and it is a little
18 difficult to imagine -- but assume, instead of the
19 courtyard, or whatever it is, the three-sided, assume it
20 wasn't blocked off at the back.

21 MS. SPIELBERG: That you could look through the --

22 MS. ROBESON: Yes.

23 MS. SPIELBERG: Okay.

24 MS. ROBESON: But you couldn't see all the way
25 down the row because of streetscaping and landscaping in the

1 mew court thing. Would that affect your view?

2 MS. SPIELBERG: My view, so to speak.

3 MS. ROBESON: Or no view. I mean, whatever, would
4 that, your viewpoint.

5 MS. SPIELBERG: I mean, I guess I'm having a
6 little bit of a hard time because I don't, are you saying
7 that I would only see the one unit that is --

8 MS. ROBESON: No.

9 MS. SPIELBERG: -- sitting on the street?

10 MS. ROBESON: No, you wouldn't, my guess is,
11 assume you're going to see multiple units, but perhaps not
12 the entire row.

13 MS. SPIELBERG: I guess I have a little bit of a
14 concern because of what happened with EYA's revised plan,
15 which was, if you just focus on the number of units --

16 MS. ROBESON: Yes.

17 MS. SPIELBERG: -- that doesn't address it
18 entirely. They have, they've made them wider in the revised
19 plan than they were previously, so it has to do, it's a
20 combination, it's not --

21 MS. ROBESON: Well, I do have a question for ETA
22 on rebuttal, but you mean --

23 MS. SPIELBERG: I mean, if they had --

24 MS. ROBESON: -- they made the units wider to have
25 the rows even. Would it be better if they if they staggered

1 the ends of the rows?

2 MS. SPIELBERG: Well, that would help but that
3 wasn't quite the point I was making.

4 MS. ROBESON: Oh, I'm sorry.

5 MS. SPIELBERG: I was saying that the, what
6 they've, the mass of building has not changed substantially
7 from what they did before in terms of what is seen on
8 Springvale Road, because they have increased the width of
9 three rows of the townhouses by two feet from what it was
10 before.

11 MS. ROBESON: Okay. Hold on there.

12 MS. SPIELBERG: Okay.

13 MS. ROBESON: When you say "width," you mean --

14 MS. SPIELBERG: Okay. I'm sorry.

15 MS. ROBESON: -- no, it's okay because I just want
16 to be clear, are you talking --

17 MS. SPIELBERG: Maybe it's --

18 MS. ROBESON: -- about the length of the string or
19 are you talking about the facade facing Springvale?

20 MS. SPIELBERG: I'm talking about the facade
21 facing Springvale when I'm making that point. Yes, the
22 facade has gotten --

23 MS. ROBESON: Okay. Larger.

24 MS. SPIELBERG: -- larger, front to back, has
25 gotten, three of those rows have gotten bigger in the

1 revised plan than they were before, so in effect, it's,
2 there was testimony before from Mr. Armstrong, so in effect,
3 in fact, what's happened is you see more --

4 MS. ROBESON: Of the facade?

5 MS. SPIELBERG: Well, you see, instead of, you see
6 less green, you see more concrete, or wood, or whatever the
7 material is.

8 MS. ROBESON: Right.

9 MS. SPIELBERG: You see more in purview. If it's
10 something that's --

11 MS. ROBESON: Although there is fewer rows.

12 MS. SPIELBERG: Not along Springvale. They're the
13 same number of rows. The only row that was taken out --

14 MS. ROBESON: Oh, oh, I see.

15 MS. SPIELBERG: It has not changed. The only row
16 that was taken out --

17 MS. ROBESON: Yes, I see what you're saying --

18 MS. SPIELBERG: I'm sorry -- is --

19 MS. ROBESON: -- is the one by the Riggs-Thompson.

20 MS. SPIELBERG: And it's actually what -- yes. So
21 in terms of what's facing Springvale, that massing hasn't
22 changed. And --

23 MS. ROBESON: Okay.

24 MS. SPIELBERG: -- I think that's what Mr.
25 Armstrong's testimony was. When you do the percentages,

1 it's tiny. And so they've actually gotten, I say wider, I
2 don't know if that's right term, it's depth or front to
3 back.

4 MS. ROBESON: Okay.

5 MS. SPIELBERG: And I think that, you know, I
6 mean, that's part of the massing, the problem. So you know,
7 you can play around with the numbers, which is, in part, I
8 think what they've done, they've reduced, you know, they say
9 they took off a row, but -- well, this is, I'm sorry, this
10 goes to the other direction, this goes to the length of the
11 strings. Again, the length of the strings has not changed
12 appreciably, even though they have taken off a --

13 MS. ROBESON: I think they've taken off a unit to
14 get more buffer in the back.

15 MS. SPIELBERG: They've done that, but in terms of
16 the length of the strings, originally, the ones closer to
17 Springvale were 100 -- I hope I remember these numbers
18 right -- 132 feet long, and then the ones closer to Cedar
19 Street were 110, for a total of 142. Now, they're each 120,
20 and so it's -- I'm sorry -- 242, 242, I added wrong. And so
21 now, they're each 120, so it's 240. It's a difference of
22 two feet. So you know, part of the problem that's going on
23 is, you can't just take off numbers, you have to take off
24 mass.

25 MS. ROBESON: Well, I think they've also, but I

1 stand ready to be corrected, they've reduced the size of
2 whatever the green space is on the northwest corner to
3 increase the area, the spacing between the rows.

4 MS. SPIELBERG: But, right, I mean, they went,
5 those, the mews, if I can use that term, went from 36 feet
6 to 40 feet, but there are only two of them, and in terms
7 that have been increased. And, but at the same time that
8 they do that, they increase two mews from 36 to 40 feet. At
9 the same time, they take three rows of townhouses and
10 increase them from 36 to 38 feet, front to back. So in
11 terms of what the Springvale Road residents are facing, it
12 is more mass.

13 MS. ROBESON: Well, what if they went back to the
14 original facade length along Springvale?

15 MS. SPIELBERG: Well --

16 MS. ROBESON: Then you'd have --

17 MS. SPIELBERG: I think they need to reduce it
18 more, I guess, is what I'm saying. I mean --

19 MS. ROBESON: I'm trying, I'm just trying, and I
20 know this sounds, I don't mean to cross-examine you; I'm
21 trying to get at what it is about the plan, because the
22 other thing that they've done is increase the green area.
23 Because I was counting on the comparable townhouses that
24 were submitted. Some of them did have sticks of six or, I
25 know I counted six on one. Some of them did have sticks of

1 one on, sticks of six townhouses. I don't know how long
2 they were.

3 MS. SPIELBERG: Well, I think part of it is, as
4 our expert testified, that you know, and I was trying to
5 convey, part of it is that they're all these sticks and rows
6 and rows, and you could break those up more. I mean, there
7 are a variety of ways to do it. Mr. Doggett is talking
8 about taking out a unit in the middle and staggering them.
9 He talked about taking two of these --

10 MS. ROBESON: So what you're saying is, you would
11 prefer to see, for instance, clusters of three?

12 MS. SPIELBERG: I think that would help. I mean,
13 I think, yes, there needs to be more grouping. It shouldn't
14 be these lines. And it may mean that the numbers have to go
15 down. But I think that would help with the site, in
16 addition to the other things which we're concerned about,
17 which is to protect the full 1.4 acres, to have a single
18 point of access so as to avoid the cut-through traffic
19 problem. And you know, I'll stop there.

20 MS. ROBESON: To be honest, I'm not sure, I mean,
21 the developer proposed a single access. My sense is that --
22 well, I don't know, that's pure speculation on my point, my
23 part. Okay. Well, that helps me understand where you're
24 coming from. You're saying that it's basically, what I'm
25 hearing from you is, it's the long connected rows.

1 MS. SPIELBERG: It's that and as well, I mean, I
2 do think the --

3 MS. ROBESON: That are lined up like this.

4 MS. SPIELBERG: That is one piece of the problem.
5 I think it's also the amount of facade that Springvale Road
6 is looking at. And --

7 MS. ROBESON: What if there were faux fronts on
8 the private street? I'm just asking.

9 MS. SPIELBERG: I don't know that that would
10 make --

11 MS. ROBESON: A difference?

12 MS. SPIELBERG: -- a difference because I think,
13 as was in the remand order before, the fronts, they're
14 important, we didn't want to get rid of them, but they're
15 not enough on their own to take care of the issue --

16 MS. ROBESON: Okay.

17 MS. SPIELBERG: -- in terms of how you view it.

18 MS. ROBESON: Okay. I understand. All right.

19 Mr. Harris?

20 MR. HARRIS: Just a couple. You talked about some
21 other projects in the area, and you were trying to look at,
22 or to evaluate density of this one versus others in the
23 North and West Silver Spring. And was it my understanding
24 that you were saying we should be more comparable in density
25 with some of them?

1 MS. SPIELBERG: What I'm saying is that your
2 density is the highest of any of them. And given, and many,
3 a number of these have an effect, have a density that is
4 significantly lower, and given where this site is, this
5 should be significantly lower.

6 MR. HARRIS: Your collective information from your
7 folks in the documents here says that you calculate Ottawa
8 Place at 11.6 units per acre and Fairview Court at 8.7 units
9 per acre. My calculations are different, 12.37 for Ottawa
10 and 12.26 for Fairview. Do you have the information that --

11 MS. SPIELBERG: I do not have that information on
12 me. If you want to, I wasn't the one who did those actual
13 calculations, but my understanding --

14 MS. ROBESON: Did Mr. Armstrong do those?

15 MS. SPIELBERG: He did those, and he --

16 MS. ROBESON: He said he got them from a county --

17 MS. SPIELBERG: My understanding, I mean, I can't
18 really testify for him, but my understanding is, you can go
19 on the county website, and if you, you can look up --

20 MS. ROBESON: Click on the development?

21 MS. SPIELBERG: Yes, you can look up development
22 plans and it gives you information here.

23 MS. ROBESON: I think that's planning or
24 MontgomeryPlanning.org, or it's, I think it's on their
25 website, but --

1 MS. SPIELBERG: I believe that's correct.

2 MR. HARRIS: So one of us is incorrect in the
3 number in any respect.

4 MS. ROBESON: Correct.

5 MR. HARRIS: Okay.

6 MS. SPIELBERG: And you can give me your numbers,
7 and --

8 MR. HARRIS: What's that?

9 MS. SPIELBERG: If you want to give me your
10 numbers, I'd be --

11 MR. HARRIS: No, I did give them to him, yes.

12 MS. SPIELBERG: Oh, I'm, okay, you gave them to --

13 MR. HARRIS: Yes.

14 MS. SPIELBERG: -- Mr. Brown.

15 MR. HARRIS: You would agree that we're well short
16 of the maximum density in the RT-12.5 zone, wouldn't you?

17 MS. SPIELBERG: Only if you put in additional
18 MPDUs. You have done the maximum you can do with the
19 minimum MPDUs is my understanding.

20 MR. HARRIS: But we could go to 15.25 units per
21 acre under the RT-12.5 zone.

22 MS. SPIELBERG: If you put in the additional
23 MPDUs.

24 MR. HARRIS: Correct.

25 MS. SPIELBERG: And if you get RT-12.5, yes.

1 MR. HARRIS: And you heard me before in
2 questioning one of the other witnesses, are you aware that
3 the size and configuration of these units is not fixed at
4 this time in the zoning case; that that's a site plan issue
5 that's dealt with later?

6 MS. SPIELBERG: I understand that you asked that
7 question. I don't have independent information. I also
8 understand that means they could get bigger.

9 MR. HARRIS: Do you, so, but you're not, are you
10 maintaining that we're fixed, we're obligated to build these
11 units at this size?

12 MS. SPIELBERG: I do not know that, but I do know
13 that --

14 MR. HARRIS: Okay.

15 MS. SPIELBERG: -- Mr. Iraola testified that he
16 had cut down the massing in part by making the mews bigger,
17 and by cutting down on the size of the Springvale Road line
18 of townhouses, and so I'm responding to that testimony
19 because you were relying on those numbers in your schematic
20 development plan. And so we took those numbers in your
21 schematic development plan and presented how they added up.

22 MR. HARRIS: And I think you agreed that the rows
23 that are along Springvale, those are shorter than the other,
24 than in the first plan?

25 MS. SPIELBERG: In terms of the length?

1 MR. HARRIS: Both in the number of units, that the
2 number of units has gone from eight, I think, and six, I
3 think, to seven and five, I think.

4 MS. SPIELBERG: I didn't testify about the number
5 of units. I did testify about the length, that it had
6 changed from 132 to 120, and then the --

7 MR. HARRIS: Okay.

8 MS. SPIELBERG: -- the other one had changed and
9 added 10 feet back on.

10 MR. HARRIS: But the ones that you would see
11 primarily from Springvale have been reduced by 12 feet in
12 length, and by one unit.

13 MS. SPIELBERG: The ones that are closer to
14 Springvale have been reduced. You will still see a line
15 townhouses that goes all the way across.

16 MR. HARRIS: Okay. No further questions.

17 MS. ROBESON: Mr. Brown, any --

18 MR. BROWN: No.

19 MS. ROBESON: -- follow-up questions? Ms., thank
20 you, Ms. Spielberg. Thank you for coming.

21 MR. BROWN: Well, let her speak up.

22 MS. SPIELBERG: Well, she's not here.

23 MR. BROWN: Go ahead.

24 MS. SPIELBERG: If I could just --

25 THE COURT: Is this the binding -- I did hear --

1 MS. SPIELBERG: Yeah, I'm sorry.

2 MS. ROBESON: I overheard you.

3 MS. SPIELBERG: Sorry.

4 MS. ROBESON: Is this the binding --

5 MS. SPIELBERG: Yes, Jean --

6 MS. ROBESON: -- proposed binding element on
7 trees?

8 MS. SPIELBERG: Jean Cavanaugh testified on
9 Friday, and said she would submit it, and she couldn't be
10 here today, but I took what she had. I have a --

11 MS. ROBESON: Mr. Harris, do you have any
12 objections, keeping in mind that it is a proposed binding
13 element?

14 MR. HARRIS: Well, I'd be curious to know if she
15 is saying that she would support the application with these
16 binding elements, or whether she is still opposing it.

17 MS. ROBESON: Well, does it matter?

18 MR. HARRIS: I don't know. I haven't studied
19 the --

20 MS. ROBESON: Legally, it doesn't.

21 MR. HARRIS: I don't know. I haven't studied
22 these to know.

23 MS. ROBESON: Okay. Well, I'm going to --

24 MR. HARRIS: It's important to me to know --

25 MS. ROBESON: -- to let it in.

1 MR. HARRIS: -- whether people are -- okay.

2 That's fine. And who's this from?

3 MS. ROBESON: This is from Ms. Cavanaugh, from
4 Jean Cavanaugh.

5 MR. HARRIS: From Jean Cavanaugh?

6 MR. BROWN: Number 340?

7 MS. ROBESON: So these will be -- yes, I'm sorry
8 -- it is 340, binding element related to trees.

9 (Exhibit No. 340 was marked
10 for identification and received
11 into evidence.)

12 MS. ROBESON: Okay. Now, do you have other
13 witnesses, Mr. Brown?

14 MR. BROWN: No, ma'am.

15 MS. ROBESON: Okay. Well, it being 6:30, 6:25, I
16 think what we will do is reconvene on -- all of a sudden, I
17 blanked out on the date -- March 30th --

18 MR. HARRIS: Friday.

19 MS. ROBESON: -- Friday, March 30th, at 9:30. Is
20 everybody okay? All right. Great.

21 MR. BROWN: Let's talk for a moment about oral
22 argument. I haven't really conferred with my clients on
23 this. They would like me to do a written argument. I know
24 that Mr. Harris wants to do an oral argument. My own
25 inclination is to try and wrap this up with an oral argument

1 as well.

2 MS. ROBESON: Well, I understand the written
3 closing. The first time I asked for a written closing
4 because there was so much material coming into the record.
5 This time, there is far less material, and I am not going
6 to, and the, and I don't think, legally, it's as complicated
7 as the case was. A lot of the issues are out of the, have
8 been eliminated, so I am not going to require written
9 closing statements.

10 MR. BROWN: I would also say that if we had to do
11 a written statement, it would be, there are still a couple
12 of rather intensely-detailed questions that I'd just as soon
13 not have to repeat all of the testimony, or all of the
14 issue, all of the details that go, for example, to Vicki
15 Warren's analysis. It speaks for itself. I can summarize
16 it in an oral argument adequately, so I think that'll be
17 fine.

18 MS. ROBESON: Now, what about your argument? Do
19 you, the legal argument you made about the ability to
20 subdivide the property.

21 MR. BROWN: I --

22 MS. ROBESON: Are you just going --

23 MR. BROWN: I intend --

24 MS. ROBESON: -- to let your written submissive --

25 MR. BROWN: No, I intend to speak to that --

1 MS. ROBESON: Oh.

2 MR. BROWN: -- during closing argument.

3 MS. ROBESON: Okay. Well, I have some questions
4 on that. I mean, I know I'm not supposed to interrupt
5 closing arguments, but if that's when you're going to
6 present it, I do have some questions on that.

7 MR. BROWN: I would be delighted to be interrupted
8 for those questions.

9 MS. ROBESON: All right. Okay. So I'm not going
10 to require written closing arguments. So we will reconvene
11 Friday, March 30th, at 9:30, with the applicant's rebuttal
12 case. All right? And thank you all very much for being so
13 dedicated and staying for so long. Thank you.

14 MR. HARRIS: And thank you.

15 (Whereupon, at 6:27 p.m., the hearing was
16 adjourned.)

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C E R T I F I C A T E

1 DEPOSITION SERVICES, INC., hereby certifies that the
2 attached pages represent an accurate transcript of the
3 electronic sound recording of the proceedings before the
4 Office of Zoning and Administrative Hearings for Montgomery
5 County in the matter of:

6 Remand Hearing of Chelsea School

7 Local Map Amendment No. G-892
8
9
10

11 By:

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14 

15
16 Kimberly L. Chwirut, Transcriber
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